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Supreme Court, U.S.
FILED

No. **051063** FEB 15 2006

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In The
Supreme Court of the United States

ALICE LARAINÉ DIMERY,

Petitioner,

v.

ULSTER SAVINGS BANK,

Respondent.

**On Petition For A Writ Of Certiorari
To The Court Of Appeals, State Of New York**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment to the Constitution permits a judicial determination of "incompetence" relative to a state chartered, federally regulated banking corporation.
2. Whether the Fourteenth Amendment to the Constitution, in the absence of a determination of fraud, permits the due process and equal protection rights of the aggrieved to be waived on the grounds of the judicial determination of "incompetence" of the corporate person: lack of legal qualifications and fitness to carry out required duties.

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PETITION FOR A WRIT OF CERTIORARI

A.L. Dimery respectfully petitions for a writ of certiorari to review the Opinion of the New York State Court of Appeals in this case.

OPINIONS BELOW

Decision & Order of the Supreme Court of the State of New York Appellate Division Second Judicial Department filed December 27, 2004 is reported at 13 A.D.3d 574 and 789 N.Y.S.2d 159 and set forth in the Appendix hereto (App. 3).

Judgment of the Supreme Court of the State of New York County of Putnam dated and decided October 26, 2000, unpublished, is set forth in the Appendix hereto (App. 9).

Decision & Order of the Supreme Court of the State of New York County of Putnam dated and decided May 19, 2000, unpublished, is set forth in the Appendix hereto (App. 56).

BASIS FOR JURISDICTION

The New York State Court of Appeals denied a Motion to Reargue Motion For Leave to Appeal on November 17, 2005 (App. 1). This petition for a writ of certiorari is filed within ninety days from the entry of the Opinion. Sup. Ct. R.13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of

life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The judgment rendered in this case by Decision and Order, a "judicial determination of incompetence" relative to Ulster Savings Bank, a federally regulated New York State chartered banking corporation is unprecedented. As self reported by the Respondent bank, "Ulster Savings Bank is a banking corporation organized and existing under the laws of the State of New York as a mutual savings bank. Ulster Savings Bank has three subsidiaries, which are Ryan Insurance, USB Agency, Inc. and Ulster Home Mortgage, Inc."

Proceedings in the State Courts

This case evidences a lack of jurisdiction, an excess of jurisdiction on the face of the record and the proceedings are erroneous on the face of the record, and there is no other adequate remedy at law.

Modified by the Appellate Division Second Department, the resultant affirmed Judgment and underlying Decision and Order hold that the Respondent Ulster Savings Bank, a federally regulated banking institution, (1) did violate statutes, laws, rules, and regulations, (2) did in fact practice fraud on the court, (3) did submit false affidavits, [labeled "affidavit[s] in a different time frame" by the trial court (App. 78), (4) did claim title to real property under referee deeds of dubious origin, (5) did fail to enter the joint venture agreement between the parties into its corporate records, (6) did fail to carry joint venture revenue receipts on its books, (7) did divest joint venture assets during litigation, (8) did claim ownership of real property of the Petitioner mortgaged to and not mortgaged to the bank under both, out of venue foreclosure proceedings and totally fabricated foreclosure representations to regulators, examiners and tenants of the Petitioner, (App. 100, 102, 99) while debiting and retaining mortgage

principal and interest under agreement between the parties (App. 89), and (9) did cause "the many other errors and omissions disclosed during the trial," (App. 83) raising jurisdictional questions for failures to comply with statutory requirements.

The bank did submit in this case a 1989 HUD settlement statement falsely identifying the city location of the property sale [Carmel, NY 10512 vs. Mahopac, NY 10541] (App. 119), and did identify itself, as seller of the property, having an address in Carmel, NY 10512 [a location without relevance to the parties' joint venture or to bank branches of record], and did differently identify itself as the lender in the transaction as located in Kingston, NY. Trial exhibits [R. 1895, 1896, 3384, 3506] further established that the relevant deed filed in the Putnam County Clerk's Office identifies the bank as seller under its Kingston, NY address, a different assertion from that in the HUD statement. Other trial exhibits [R. 2525], filed in Putnam County Offices, confirm a previous sale of the same property to the same buyer for the same price as reported in the HUD statement but on an earlier date under a referee deed of dubious origin different from the deed filed in the Putnam County Clerk's Office referencing the Petitioner's subdivision plat, filed map #2252B. (App. 107, 108, 110, 111)

The R.¹ at page 3993, trial exhibit 43, is the 1982 HUD settlement statement relative to Dimery's original mortgages on the geographically related subdivision parcels which were vacant land in 1982. This 1982 HUD statement identifies the property as being located in Mahopac, NY 10541, not Carmel, NY 10512 as reported to HUD in 1989 by Ulster Savings Bank. Trial documents from the files of the Respondent bank further state that this property was sold previously by the bank in February of 1986, within weeks of it claiming ownership by surreptitiously filing a referee deed of unknown origin, and the March 1, 1985 collateral deed from the Petitioner, and that application for a mortgage in conjunction

¹ This reference is to the reproduced Record on Appeal.

with the sale was made by Ulster. The "tenants" of record were those of the Petitioner. (App. 100, See App. 94) The joint venture accounting credited only one \$230,000.00 transaction pursuant to instructions from the trial court. (App. 62) Bank tax records report that this same purchaser also bought Petitioner's residence in 1989 from Ulster. (See App. 78) A case document obtained from the files of the bank additionally reports that in February of 1986, Petitioner's residence was also sold and that the bank sought a mortgage for the transaction. The document reports that the residence was *vacant* at the time of the sale in 1986, while the bank serviced the Petitioner's residential mortgage (See App. 92, See App. 89, 90, 104) and reported to the FDIC and the New York State Banking Department that the property was an ORE in the bank's possession, having been foreclosed. (See App. 97) The bank's general ledger reports a \$106,000.00 deferred profit on the above discussed \$230,000.00 sale as an ORE in 1989. (App. 96, 97, 98)

In Plaintiff's Reply Brief under section entitled "The Documentary Evidence Reports Multiple Sales" pages 33-34, the HUD issue was raised before the Supreme Court.

This is not a case where the plaintiff has asked the Court to re-write any agreement with the defendant. Rather, the plaintiff seeks to have the agreement with the defendant, as claimed by her and as demonstrated by the weight of the evidence, validated and her rights thereunder upheld. [Ibid. 38] (See App. 72)

What the bank did, during the dealings of the parties is clear on the face of the record, and acknowledged and understood by the trial court in statements from the bench, by Decision, and Order and final Judgment, and are covered in specific relevant detail below.

The Court: The venture was an item on the side of someplace, however you want to categorize it, but it was not reflected in the normal course in the bank's records, and I think that is not

disputed, I think that has been testified to and is not in dispute [R. 886 line 20]

Correspondence (App. 87) [Exhibit K Affirmation of Order to Show Cause January 4, 2000 Appellate Division] from the Chairman and CEO of Ulster Savings Bank, Howard C. St. John, dated June 5, 1989, to the Petitioner, seeking to reduce the Petitioner's joint venture "profit from 33 $\frac{1}{3}$ % to 25%", "based on extention [sic] of your contract with Ulster Savings dated March 1, 1985", stated the following:

I would respectfully urge you and request that you obtain services of an independent attorney to review the agreement to see that you [sic] rights are fully protected. Throughout these negotiations I have acted solely on behalf of Ulster Savings Bank and as Chairman of that Bank, I have no duty and or obligation to protect your interests, since they are necessarily adversarial to the Bank. [Affirmation in Support of Order to Show Cause, pg.17, January 4, 2001 Appellate Division Second Department]

"... In that fiduciary or confidential relationship, [defendant bank] did not act towards the plaintiff with any loyalty." "The preference to self is made subordinate to loyalty to others." *Meinhard v. Salman*, 45 N.Y.2d 233 (1978) [Plaintiff's Post-trial Memorandum, page 48, February 28, 2000]

Before the trial court was an April 25, 1991 cover letter (App. 89) to the Petitioner from chairman Howard St. John accompanying an accounting statement identified by him as having been prepared by the mortgage department of Ulster Savings Bank. St. John claimed ownership for Ulster of the Petitioners mortgaged to Ulster and non-mortgaged to Ulster real property, stating that the bank's rights stemmed from unidentified foreclosure actions. The March 1, 1985 Agreement, held by the trial court as having established the parties' joint venture, was not referenced in the letter. The accounting was a detailed statement of the complete liquidation of the Petitioner's mortgage obligations to the bank, determined by the trial court as being extant on March 1,

1985 when the Agreement was signed. (App. 57) The sum reported in the accounting statement as having been debited and retained by Ulster, liquidating the mortgages, was \$636,745.05, principal and interest, on residential property \$358,224.48 and \$278,520.57 on the two vacant subdivision parcels part of the joint venture subdivision property. [R. 2904] Ulster Savings Bank in its Memorandum of Law, dated December 29, 2000, in Opposition to Plaintiff's Motion to Stay Enforcement of Judgment, "explained" to the Appellate Division Second Department that the Petitioner "has lived parasitically off Ulster." "The accounting clearly shows that the Respondent acknowledged debiting over \$636,000.00, thus liquidating the mortgage indebtedness allegedly due from Appellant from the activities on the real property in question." [Affirmation in support of Order to Show Cause, pg.15 October 15, 2000 Appellate Division Second Department]

The chairman's letter to Petitioner, adjudged the bank's joint venture partner, concluded:

All of the foregoing information is provided you [sic] without any acknowledgement of any legal rights to this information, or to any other aspect of these transactions. This information is provided to you solely as a matter of courtesy, without any legal implications flowing there from.

By Decision and Order the trial court held

... the bank was extremely liberal in the manner in which it treated Dimery as compared to any other mortgagor. It was highly unusual for a bank to enter a joint venture with a debtor ... Under these circumstances to seek and ask for punitive damages is like biting the hand that feeds you. (App. 85)

In Plaintiff's February 25, 2000 Post-trial Memorandum at page 15, counsel argued that in the Agreement as written,

"there was no obligation on the part of the defendant [bank] which could be measured against any countervailing duty upon the defendant by

which to measure its decisions . . . The defendant, in the person of Howard St. John, was the sole arbiter of the structure of the various transactions," always structured "to the detriment of the Plaintiff." T. 525-528. " . . . plaintiff's sole function was to perform all the subdivision acts, then be ushered off the stage with nothing."

" . . . The plaintiff and defendant entered into an effective fiduciary relationship, herein the plaintiff turned property over to the defendant and the defendant is properly charged with accounting for its dealings therewith."

Relevant trial transcript reports:

Regarding the *original* copy of the March 1, 1985 Agreement, signed by the Respondent bank and the Petitioner, which could not be produced at trial by the bank, St. John testified, "It should be in the bank's records", "It would be with the mortgage Department," "It would probably be with the department itself." [R. 913 lines 10-20] He also testified that the Agreement is, "a matter of public record in the bank for examiners," [R. 1087 line 9] " . . . the FDIC, the Banking Department both knew about this transaction. They had copies of the contract. They knew exactly what was going on, and every year they came in and looked at that particular phase of it, what deals had been made, how much monies [sic] had come in, what was due and owing afterwards." [R. 1090 lines 4-10] Coadministrator of the March 1, 1985 Agreement, John Schussler offered conflicting testimony on two occasions at trial admitting that "there was nothing in the bank's records that indicated that there was a Dimery-Ulster Savings Bank agreement." [R. 712 lines 5-10] Schussler explained that any revenue received under the March 1 Agreement would be identified, if reported, strictly as income from foreclosed property or ORE. [R. 712 line 18]

The bank admitted that the ORE accountings have nothing to do with the calculations made under the March 1, 1985 Agreement. [R. 908 lines 7-12]

The bank admitted that the \$281,200.00 mortgage balance, the Petitioner's debt explicitly identified as the

Petitioner's principal continuing debt obligation in the March 1 Agreement, [R. 53] was carried as an ORE asset. The difference between that sum and the Agreement's \$364,926.14 total mortgage debt acknowledged as a continuing obligation by the Petitioner could not be accounted for. "It wasn't on the bank's books", [R. 598 line 2] and that while the \$281,200.00 as an ORE asset could not generate interest, under Banking Department rules, Dimery under the mortgage restructuring section of the Agreement, was charged interest on the entire \$364,926.14, *unaccounted for in bank records*. [R. 603 line 9, 605 line 14]

Decision and Order

The matter was tried by the court without a jury over several weeks commencing December 13, 1999 and ending on January 7, 2000. The Decision & Order, dated May 19, 2000 concluded Phase I of the Trial. The trial court bifurcated the trial proceedings, in the Decision & Order, holding

It is the Court's intention to furnish rulings and determinations herein which will allow for preparation of a proper and fair accounting, regardless of what the final balance may be and in whose favor. The end result can only be determined in *phase two* of the trial after the accountants confer and prepare their joint revised accounting for the Court. (App. 82)

The accountants are directed to confer and to prepare a joint account consistent with the rulings herein and to submit the same to the Court and to the parties on or before July 14, 2000. A conference is scheduled for August 15, 2000 at which time counsel shall settle, on notice, a proposed judgment based upon the determinations herein rendered. (App. 86)

By Decision & Order, the trial Court held "There is no basis to set aside the agreement or to find the original agreement fraudulent and non-binding on the plaintiff." (App. 70)

"Dimery has chosen to accuse Ulster of making false documents and suspicious entries and funneling monies without presenting any credible evidence." (App. 78)

"There is a difference of as much as 1 1/2 to 2 million dollars between Dimery's claim there was a profit and Ulster's claim there was a loss." (App. 67)

"The court is mindful of 'Ulster's incompetence' as well as the many other errors and omissions disclosed during the trial." (App. 83)

"Tax records, an affidavit that reflects balances in a different time frame, and the use of inappropriate forms to reflect transactions and various other items submitted at trial do not rise to the level of proof required to sustain these claims." (App. 78)

"Dimery fails to prove that there were multiple sales of lot[s]. . . . Assessors records do not rise to the level of proof required." (App. 84)

"Reliance on use of purchase money mortgage forms [filed in the Putnam County Clerk's Office] where other documents [in bank files] also refer to these mortgages as building loans is not evidence that fraud was committed by Ulster." (App. 79)

"While there were many loose ends and extremely sloppy legal work and use of inappropriate forms, failure to timely record instruments, and many other shortcomings as noted in plaintiff's brief, none of these individually or collectively constitute proof of fraud by clear and convincing evidence." (App. 79)

"Dimery has failed to prove fraud . . . " (App. 85)
 "Since plaintiff Dimery has failed to prove fraud, there is no basis for imposing a constructive trust." (App. 85)

Relative to the Petitioner's assertion that the bank's claim of a landlord tenant relationship between the parties in a summary proceeding on the basis of a non existent "lease" was false and fraudulent, the court held that a proper petition as established by law was not a requirement for it to acquire subject matter jurisdiction over the proceeding, and held as harmless the bank's false "allegation."

In its Decision & Order, the trial court stated

Plaintiff claims that the summary proceeding was part of the alleged fraud. The Court removed the Justice Court proceeding to this Court to be dealt with herein.

Holding as irrelevant, "whatever the form of the proceeding," the trial court concluded, "Once again careless legal work and terminology do not constitute fraud. Whoever determined to bring a summary proceeding *alleging* a month-to-month tenancy and a holdover obviously failed to read. . . ." Ulster, under the terms of the agreement, needed only to give Dimery a 30-day termination notice and then to seek judicial assistance should she fail to vacate. (App. 81)

The record before the trial court established that the decision to bring the summary proceeding was made by the President, CEO and Chairman of the Respondent bank in his official capacity as having signed for the corporate Respondent the March 1, 1985 Agreement between the parties, prepared by a bank trustee and attorney for the bank, [R. 851 lines 12-18, 852 line 16] which chairman acknowledged in testimony that he was as general counsel to the bank, "the man responsible for regulatory compliance," and that his law firm was counsel to the bank. [R. 1078 lines 15-25, 1079 line 2]

Nowhere in the lower court's determinations was there a finding of the existence of a landlord-tenant relationship of any sort between the Appellant and the Respondent as pertained to the summary proceeding commenced against the Appellant . . . [Reply Affirmation, pg.2, January 3, 2001]

The trial court granted the bank's Summary Petition by judgment. (App. 11)

Appeal and Cross Appeal of Decision and Order

On September 7, 2000 counsel for the Petitioner appealed the Decision & Order to the New York State Appellate Division Second Department on the grounds

that only the mechanical preparation of the accounting remained and sought a stay in proceedings based on the irregularities surrounding the court's material alterations of its entered decision on August 29, 2000 and September 6, 2000. The bank's Notice of Cross Appeal is dated October 3, 2000. On November 17, 2000, the Appellate Division Second Department dismissed the appeal on the grounds that it was not final in the meaning of the constitution; "no appeal lies from a decision," and denied the stay in proceedings. Upon the appeal, the trial court lost jurisdiction of the case throughout the appeal process. The trial court improperly proceeded to judgment on October 26, 2000.

Exercise of Appellate Jurisdiction by Supreme Court

On August 11, 2000, counsel for Ulster Savings Bank submitted a letter [R. 117] via Federal Express to the Court, without entry of the correspondence in the Office of the Putnam County Clerk, explaining that the accountants had "unresolved issues" requesting that the court revisit the entered Decision & Order and provide "additional guidance." The letter stated that it and additional "letters" to be received by the court in conjunction with a scheduled September 6, 2000, "should help the parties and the Court focus on the key arguments and evidence at the upcoming conference."

On August 29, 2000 the trial court, in an improper and prohibited exercise of appellate jurisdiction, distributed to the parties, in answer to the request prepared by the bank, an informal not of record memo, authorizing changes, material restatements, alterations and additions to the filed Decision & Order, which were incorporated as "Guidance" in final judgment dated and entered October 26, 2000. (App. 10) The "guidance" holdings award the bank additional monies, not included in the filed Decision & Order, far in excess of \$600,000.00. The changes also prohibit the inclusion of other revenue receipts conservatively totaling, of record, several million dollars. Counsel for Dimery orally argued the following at a September 6, 2000 conference [R. 125] and counsel did further argue in

briefs to the Appellate Division Second Department and the Court of Appeals:

CPLR 5019(a) provides: Validity and correction of judgment or order. "A judgment or order shall not be stayed, impaired or affected by any mistake, defect or irregularity in the papers or procedures in the action not affecting a substantial right of a party. A trial or an appellate court may require the mistake, defect or irregularity to be cured."

The statute incorporates and continues a long-standing tenet of law that a judgment or order cannot be changed amended or corrected by the trial judge issuing that judgment or order if such change affects the substantial rights of a party. *Herpe v. Herpe et al.*, 225 N.Y. 323, 327 (1919)

The rule is equally applicable to judgments, orders and decisions of the Court.

When a decision on the merits has been rendered after a trial, the Court is without power to make a different decision. It may only correct errors clerical in their nature or in a proper case, it may set aside its decision and order a new trial, but it is not authorized to make a new decision. *Miltenberg & Samton, Inc. v. Falkingham*, 273 A.D. 631, 632, 78 N.Y. S. 2d 704, 705 (1st Dep't 1948)

The judgment

The judgment issued by the trial court, below, awards money and property to the Respondent [bank] under an accounting for a "December 18, 1984 contract." Such an agreement was never the subject of the trial between the parties. There was never any December 18, 1984 contract signed, seen or adopted by the Appellant and the entirety of trial court's determinations, during trial involved a March 1, 1985 Agreement. No evidence was offered of an alleged liability of the Appellant under a December 18, 1984 contract, and nothing in the subject matter before the trial court addressed an agreement with the date of December 18, 1984. The judgment, with its included accounting utilized for its

final entry, radically alters the arrangement between the Respondent [bank] and the Appellant. [Affirmation in Support of Order to Show Cause December 20, 2000 Appellate Division Second Department]

The trial court did not possess the jurisdiction to decree by judgment against Petitioner that *prior to* the March 1, 1985 Agreement, the Petitioner under a "December 18, 1984 Contract" on the calendar date of February 28, 1985, had joint venture obligations and indebtedness to the bank in the amount of \$376,522.20, a date prior to the establishment of the joint venture as held by the trial court. (App. 17)

"The trial court's Decision and Order specifically refers to the parties having attained the subject relationship on March 1, 1985, but no accounting was commenced on that date to derive the judgment being appealed." [Affirmation in Support of Order to Show Cause December 20, 2000 Appellate Division Second Department]

"In fact, there is no entry in the judgment accounting utilized by the Court for any activity on March 1, 1985." (See App. 18)

"The judgment, as entered, operated as a substantial material change of the Decision and Order from which it should have flowed, and has no basis in law or fact." [Affirmation December 20, 2000 Appellate Division page 13]

"... The judgment predicated upon the accounting is seriously flawed for it is based upon something for which the Appellant has no debt obligation ... without explanation or basis in the record." [Affirmation December 20, 2000 Appellate Division]

"In fact, predicating the judgment upon an unknown December 18, 1984 (See App. 17) contract, when the Respondent still had retained [alleged] foreclosure rights, which would have been foregone pursuant to the March 1, 1985 Agreement ... while still purporting to the Appellant to be operating under the March 1, 1985 agreement

which was the subject of trial below, is fraudulent." [Affirmation in Support of Order to Show Cause Appellate Division Second Department December 20, 2000 page 13]

"... Predicated upon a starting point of December 18, 1984, even in the totality of the trial court's Decision and Order and subsequent activities, such an accounting could not have been stated as pursuant to any action of the trial, to the serious detriment of the Appellant." [Affirmation in Support of Order to Show Cause Appellate Division Second Department December 20, 2000 page 15]

"... This Court is being presented with a judgment without a full record [lack of Phase II trial record] against which to measure the propriety of the judgment entered below, and further, with a judgment addressing subject matter or facts which were never in existence throughout the trial of this matter." [Affirmation in Support of Order to Show Cause dated December 20, 2000 page 16 Appellate Division Second Department]

The judgment of the trial court is invalid for want of jurisdiction, evidences bias of the trial judge, judicial collusion, and structural error which affect the framework in which the trial proceeded. The very existence of the judgment, attaching liability to the Petitioner is a violation of the Petitioner's constitutionally guaranteed due process and equal protection rights, and the defects on the face of the judgment prohibit attachment of the presumption of regularity.

Appeal to Appellate Division Second Department

On October 27, 2000, counsel for Dimery appealed to the Appellate Division of the Supreme Court of the State of New York Second Department from the judgment of the Supreme Court of Putnam County, entered on October 26, 2000, excluding that part of the judgment entitling Dimery to title and possession of the "Lakefront parcel," so called therein. On November 14, 2000, counsel for Ulster Savings

Bank cross-appealed the judgment, from every part therein.

On December 29, 2004 the Appellate Division Second Department by Decision and Order dismissed the bank's cross-appeal for failure to perfect, denied the bank's motion to strike Dimery's brief for materials claimed to be de hors the record, held that the trial court erred on the law, vacating \$327,221.98 in money judgment awards to the bank, and found that the trial court's determination that the March 1, 1985 Agreement did not reinstate Dimery's mortgages to be "fair." (App. 3) The court otherwise affirmed the judgment, without findings of fact or rendering opinion. By Decision and Order dated March 28, 2005 the Appellate Division denied a Motion to Reargue, Resettle and Amend the Decision and Order or in alternative for leave to appeal to the New York State Court of Appeals. (App. 7)

Motion for leave to appeal to New York State Court of Appeals

On July 6, 2005 the Court of Appeals denied a Motion for Leave to Appeal, and on November 17, 2005 denied a Motion to Reargue Motion for Leave to Appeal. (App. 1, 2)

The petition for certiorari follows.

REASONS FOR GRANTING THE WRIT

The judgment in this case passed scrutiny of the Appellate Division and the New York State Court of Appeals because of systemic loopholes permitting the misapplication of "the presumption of regularity" doctrine and "harmless error analysis" in civil cases allowing constitutional violations of due process and equal protection rights, redress of which are never given a day in court. Certainly, the judicious use of state and federal resources and the finality of judgment doctrine must be respected. In such case, the responsibility of the trial court to adjudicate impartially and the obligation of the state's immediate reviewing court to dutifully execute its responsibilities

are the yardsticks by which most in this nation measure how "fairly" justice is dispensed under the guarantees of the Constitutional system of laws. The judicial system's deference to findings of fact at the trial court level, and the primary examination of principles of law at the appellate level permit those judges so inclined to abuse this "honor system." If the factual holdings of the court are false or contradictory, the trial court's decisions and judgments are built upon shifting sand. A finding of law, though erroneous, may appear to a reviewing court as reasonable or "fair" or correct if undue deference is given to the fact findings and exercises of discretion of the lower court.

The practice of a state Appellate Division to affirm a trial judgment in whole or part without comment or opinion invites the potential miscarriage of justice. The prejudiced party loses the right to automatic appeal in New York State if no findings of fact are made by the appellate division, and affirmation, without comment, leaves reasonable questions as to whether the court misunderstood the facts, and to what extent relevant application of the law may have been misapprehended. The lack of reviewing opinion relative to alleged violations of due process and equal protection rights in a case of this complexity is unusual and perplexing. In 2001 the District Attorney of Putnam County made application for the appointment of a Special Prosecutor to investigate the possibility of a conspiracy by the bank to defraud the Petitioner. The amended order of the Supreme Court of the County of Putnam appointing the current third Special Prosecutor is included in the appendix. (App. 121)

I. THE COURT SHOULD GRANT CERTIORARI IN THIS CASE TO DETERMINE THE CONSTITUTIONALITY OF THE JUDGMENT

Since jurisdiction cannot be waived, the silent application of harmless error review by the lower courts would be a violation of procedural due process, and contrary to the explicit rulings of this Court.

While this Court has held that no one is guaranteed a perfect trial, the rulings of the Court have upheld the constitutional right to a trial bereft of structural error which affects the framework in which the trial proceeds and which in effect is the denial of a "fair" trial.

This court has stated that exceptions to harmless error review in federal constitutional law are "rare."

This case has departed from the accepted and usual course of judicial proceedings, and exhibits such pervasive "rare" constitutional structural error that, most respectfully, this Court should exercise its supervisory powers to correct the error.

II. THE COURT SHOULD DETERMINE WHETHER A CORPORATE PERSON CAN BE ADJUDGED "INCOMPETENT"

At issue before the Court is whether a chartered corporate person can be judicially determined "incompetent" and if so, in fact not be correspondingly adjudged in violation of the charter under which it exists, in effect forfeiting its right to a chartered existence. A determination of "incompetence" relative to lack of legal qualifications and fitness to carry out required duties as mandated by charter would imply a corresponding requirement to force the bank into receivership with a "guardian" such as the FDIC, akin to fiscal insolvency.

A. This is an issue of first impression which should be decided by the Supreme Court

The Court has repeatedly held that because the corporate person is not an individual person, Fifth Amendment privileges relative to self-incrimination cannot be claimed by a corporation, codifying that not all constitutional rights guaranteed to natural persons can be asserted by a "creature of the state." *United States v. White*, 332 U.S. at 699.4.

... individuals, when acting as representatives of a collective group, cannot be said to be exercising

their personal rights and duties nor to be entitled to their purely personal privileges. Rather they assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations. In their official capacity, therefore, they have no privilege against self-incrimination.

In *Braswell v. United States*, 487 U.S. 99 (1988) the Court stated that white collar crime is a serious public concern, and unencumbered enforcement of federal and state laws is in the public interest.

We note further that recognizing a Fifth Amendment privilege on behalf of the records custodians of collective entities would have a detrimental impact on the Government's efforts to prosecute "white-collar crime," one of the most serious problems confronting law enforcement authorities. "The greater portion of evidence of wrongdoing by an organization or its representatives is usually found in the official records and documents of that organization. Were the cloak of the privilege to be thrown around these impersonal records and documents, effective enforcement of many federal and state laws would be impossible." *White*, 322 U.S. at 700. If [487 U.S. 99, 116] custodians could assert a privilege, authorities would be stymied not only in their enforcement efforts against those individuals but also in their prosecutions of organizations. In *Bellis*, the Court observed: "In view of the inescapable fact that an artificial entity can only act to produce its records through its individual officers or agents, recognition of the individual's claim of privilege with respect to the financial records of the organization would substantially undermine the unchallenged rule that the organization itself is not entitled to claim any Fifth Amendment privilege, and largely frustrate legitimate government regulation of such organizations."

The trial court's determination of "Ulster's incompetence," holding harmless "errors and omissions," evident on the face of trial documents permitted the bank, de facto, to

hide behind prohibited Fifth Amendment "self-incrimination" privileges, affecting substantial rights of the Petitioner.

B. Article XIII-D misconduct relating to banking organizations

Section 660. Misconduct of officers, directors, trustees or employees of banking corporations and of private bankers. Section 672. Falsification of books, reports or statements of private bankers or corporations subject to the banking law. 1. Any officer, director, trustee, employee or agent of any corporation to which the banking law is applicable who makes a false entry in any book, report or statement of such corporation with intent to deceive any officer, director or trustee thereof, or any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public officer, office or board to which such corporation is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or who, with like intent, willfully omits to make a true entry of any material particularly pertaining to the business of such corporation in any book, report or statement of such corporation made, written or kept by him under his direction, is guilty. . . . New York State Banking Laws.

In this case, serious incontrovertible evidence of misconduct on the part of a federally regulated bank has been by judgment and affirmation held harmless by virtue of a judicial determination of "incompetence" of a corporate person, discarding the legal principles of corporate liability and accountability under law and waiving constitutional guarantees of the aggrieved on the grounds that this is constitutionally permissible absent a determination of fraud.

III. CERTAIN CONSTITUTIONAL STRUCTURAL ERRORS REQUIRE AUTOMATIC REVERSAL OF JUDGMENT

A. Case proceedings are erroneous

Having brought the foreclosure actions against Reymert, in the middle of the instant litigation,

and having made one set of assertions, which were accepted by Judge Hickman resulting in foreclosure judgments, under the doctrine of issue preclusion, the Respondent [bank] should not have been allowed to take a stance different in the case now before this Court and the trial judge should not have accepted a different understanding of the transaction diverging from the one he himself accepted in the prior judgment. [Affirmation in Support of Order to Show Cause dated December 20, 2000 Appellate Division Second Department]

Whatever is necessarily implied in the former decision is for the purpose of estoppel deemed to have been decided which flow from that judgment, including conclusions of law or facts. *Pray v. Hegeman* 98 NY 351 (1885) [Plaintiff's Post trial Memorandum page 28]

In 1995 and 1996, during the course of the foreclosure litigation, before this same Court, the defendant [bank] disclosed and asserted entirely different terms and monies due and owing it . . .

Wherein decisions have been made based upon its assertions and allegations, which should estop it from asserting the contrary in this action. [Ibid. page 33]

All the documentary evidence indisputably shows that the Reymert Construction Corp. transactions, as they impact upon the plaintiff's liability to the defendant and as they would lead to a determination of profitability, were underreported, and it is maintained, fraudulently underreported. [Ibid. page 29]

. . . To accept the defendant's position would be an assault on the integrity of the judicial system. [Ibid. page 33]

For this Court to accept that assertion by the defendant [bank] would be to accept an assertion that the judicial process can be *devoid* of any integrity . . . [Plaintiff's Reply Brief April 3, 2000 page 7]

The Court is being asked to accept that this defendant [bank] either does not know how to write a construction loan or that it does not know the normal and statutory requirements of construction loans. [Plaintiff's Reply Brief page 8]

... The defendant's actions over the course of its dealings with the plaintiff were not just wrong, but fraudulent. [Plaintiff's Reply Brief page 13]

As referenced above, the trial judge during litigation permitted the Respondent bank in a related legal proceeding involving Reymert Construction Corp. to divest \$2,855,000.00 in joint venture funds and additional bond and mortgage rights, held in trust, to a third party without notice to Petitioner. By Decision & Order, the trial court held that the total sum of the Reymert transactions, relative to the joint venture was \$270,000.00. (App. 63)

B. Evidence of judicial bias

The Trial Judge prejudged and predetermined the outcome of the case.

At the conclusion of Phase I of the trial, by Decision & Order the trial court held "for many reasons the venture *did not* generate funds to pay off her indebtedness." (App. 80)

This prejudged holding of the court prior to Phase II of the trial effectively and in fact did foreclose the Petitioner's real property rights and entitlement to profits from the joint venture, and with bias determined before the preparation and analysis of the accounting that the joint venture was not profitable.

The Decision & Order simultaneously held that Phase II of the trial would be the preparation of an accounting in accordance with the court's determinations in the Decision, and that a "proper and fair" accounting (App. 82) would be the basis on which the court would adjudicate the rights of the parties relative to the liquidation of mortgage indebtedness on the part of the Petitioner and joint venture profits to be shared by the parties pursuant to the March 1, 1985 Agreement.

The trial judge pierced the veil of judicial impartiality and denied petitioner a fair trial when he rendered a Trial Phase I *predetermined* Decision, evidencing bias and collusion, that Dimery's debt *was not* liquidated by funds received under the joint venture, and then bifurcated the trial holding that Phase II of the trial was for the preparation of a "proper and fair" accounting to determine whether the venture was profitable, which solvency was predicated on the liquidation of Dimery's indebtedness. Ensuing revenue and real property entitlements of the parties were to be determined by the results of the accounting. "The summary proceeding removed to this Court from Justice Court, Putnam Valley, will be held in abeyance pending the revision of this accounting and the results thereof." (App. 85) Though the landmark decisions of the Court regarding structural error emanate from criminal trials, and the record is scarce relative to specific civil cases applications, there is nothing in the language of the decisions which prohibits their application to civil cases.

The May 19, 2000 Decision, in fact, ordered that the accounting result in calculations to support the prejudged and bias determination by the court that "... the venture did not generate funds to pay off her [Dimery's] indebtedness," while the court disingenuously held that its determinations are for a "fair and proper" accounting, regardless of what the balance may be and in whose favor," in a veiled attempt to camouflage judicial bias. This Court has established judicial bias to be structural error affecting the trial mechanism, and that such can never be subject to harmless error review, and that a determination of judicial bias requires automatic reversal of the judgment. See *Arizona v. Fulminate*, 499 U.S. 279 (1991); *Chapman v. California*, 386 U.S. 1822 (1967); *Neder v. United States*, 527 U.S. 30 (1999); *Rose v. Clark*, 478 U.S. 570 (1986); *Strickland v. Washington*, 466 U.S. 668 (1984); *Sullivan v. Louisiana*, 508 U.S. 275 (1993).

By Decision & Order the trial court held "... the larger ... Valley parcel was omitted from the *original mortgage* ..." (App. 58) Ulster claims that through a

clerical error this portion of the Valley property was omitted from the foreclosure. This is another example of the sloppy and incompetent legal work involved in this joint venture. (App. 80)

The trial court held that the bank's claim, *seventeen years* after the fact, that due to a 'clerical error', a mortgage had not been recorded on Dimery's fifteen acre parcel, improved by three buildings was reasonable and that the court would proceed as though in fact the mortgage had been given and recorded.

Howard St. John [Respondent Bank CEO & President] stipulated that there were no mortgages nor foreclosures on some of the subject properties. [R. 951 line 19]

Counsel for Plaintiff argued in Plaintiff's Reply Brief, dated April 3, 2000 to Supreme Court County of Putnam pages 4-7, that the intent of the parties relative to the Union Valley Road mortgages is clear from the documents.

"The defendant had to know what was being mortgaged at the time of the execution of the mortgages as evidenced by Exhibits PP and PP-1 . . . [R. 2216-2253, excepting 2248] [R. pages 2249 and 2251, Title Report documents, confirm that the mortgaged premises are two parcels of vacant land. This fact was confirmed in the filed mortgages by initialing [R.1824, 1834]

In the context of the writing of the mortgages, what a lender would or would not do is an irrelevant to the inquiry. This defendant handles 200-300 million dollars worth of mortgages a year . . .

"T.917" A party to a written agreement may not assert its validity and at the same time deny that the writing embodies the actual contractual rights and obligations which the parties intended to make. *Fields v. Delmonico Hotel Corp.*, 38 M. 2d 704. [Plaintiff's Reply Brief pages 4-7 Supreme Court County of Putnam]

Counsel for the Petitioner further argued that "All the elements of fraud exist" in this case. "The fraud . . . was a continuing endeavor on the part of the defendant [bank] to

eventually shuttle the plaintiff aside after the benefits of her efforts in creating a valuable subdivision on the Union Valley Road property came to fruition." [Ibid. page 21]

While simultaneously representing to the Town of Carmel that it was submitting funds "to further the application of Mrs. Dimery" in September 1985 (Exs.1, 26), "the defendant was planning to claim the property under foreclosure." [Ibid. page 25]

Preliminary approval for the entire eleven lot subdivision was obtained on January 8, 1986. Ex. 26 Planning Board minutes of January 8, 1986. Thereafter, on January 29, 1986, the defendant [bank] filed two deeds, the deed from the plaintiff to the defendant and the foreclosure deed for the Union Valley Road foreclosures . . . The objective of the defendant, by receiving the deed from the plaintiff to the defendant, was to bring into the defendant's hands that part of the Union Valley Road property which was never mortgaged. [Ibid. page 22]

Without informing the plaintiff that it had recorded the foreclosure deeds, the defendant represented to the plaintiff that together they were working toward a common purpose aimed at liquidating plaintiff's indebtedness, as evidenced by the accounting given over time to plaintiff by defendant, such representations upon which the plaintiff continued to rely. [Ibid. page 24]

The court in its Decision & Order, by discretion, determined that the security deed was not a mortgage, because Dimery restructured payment of her mortgage debt under the agreement, and such was a fatal acknowledgment of an original failure to liquidate the debt, *barring equity*. (App. 71) "Point I of Plaintiff's Memorandum clearly sets forth the applicable law regarding the considerations for determining whether or not a conveyance is a mortgage. And, it is not limited to the field of equitable mortgages. . . ." [Plaintiff's Reply Brief page 4]

To buttress this untenable position, the court falsely stated that never endorsed, never deposited checks, with no markings (App. 120, 57) [R. 2933, 2932, 2530] given by

Dimery to the bank had been "dishonored" by Dimery's bank two years prior to signing the March 1, 1985 Agreement, an outrageously false claim not even made by the bank itself at trial, and that a check which could not be produced by the bank was not paid, and that a check which the bank acknowledged as paid was a substitution check, despite the face amounts being different, and the bank's inability to produce the original document, which appears to have been cashed as well. [Banking institution microfilm records had been destroyed prior to trial.] "As a matter of law, Appellant did not have unclean hands." [Reply brief for Plaintiff-Appellant-Respondent, dated June 30, 2004 Appellate Division Second Department]. Although certiorari does not lie to control judicial discretion, it is available to control "plain, manifest, clear, great or gross abuse of discretion . . ." *Simpson v. Pulaski County Circuit Court*, 320 Ark. 468, 899 S.W.2d 50, 51 (1951) " . . . Those checks were never negotiated by the Respondent . . . they could [not] have been dishonored." [Reply Affirmation December 20, 2000 Appellate Division Second Department page 5].

The trial court's patently incorrect unclean hands determination and the abusive discretionary determination that the deed was not a new mortgage were in fact smoke screen distractions to conceal fraud on the court under the color of law. The trial court also determined in the same Decision & Order that the *original* 1982 mortgages given by the Petitioner to Ulster Savings Bank were extant on March 1, 1985, specifying that \$281,200.00 in mortgage principal and \$70,787.72 in accrued interest were "still due Ulster." (App. 57) Nothing in the record demonstrates the valid termination of the Petitioner's ownership rights under the original 1982 mortgages on which principal and interest were "still due Ulster" on March 1, 1985.

The bank retained the funds liquidating the original mortgages, and retain the mortgaged property and the non mortgaged to Ulster property, under the court's holding that as part of the agreement of March 1, 1985, Dimery "astute and intelligent" *voluntarily* entered into a joint venture and *deeded* her property to the bank," for no logical reason without obligation on the part of Ulster. (App. 70)

The Appellate Division Second Department held that the trial court's determination that the new deed was not a mortgage is "fair." (App. 3) It is respectfully suggested to this Court that the machinations of the trial court and the Respondent bank are so complex and devious that coupled with the repeated false foreclosure claims in the bank's briefs to the reviewing courts, considering the standard of review, and the presumptions of regularity with respect to the findings of the trial court, and the judgment itself, that the reviewing courts misunderstood the facts, and misapprehended the applicable law.

C. Lack of Phase II trial record

At each step after the Decision and Order, without any particular records being established for its determinations, the trial court did not merely correct clerical errors – it made several determinations which altered its own Decision and Order and materially affected a substantial right of the Appellant. The judgment being appealed is the embodiment of various inconsistencies and practical additur of liability against the Appellant, without any legal basis. [Affirmation in Support of Order to Show Cause, dated December 20, 2000 page 11 Appellate Division Second Department]

D. Denial of the right to be heard

... the court, via a correspondence dated August 29, 2000, issued determinations addressing the issues posed by counsel for the parties *before* the conference date [September 6, 2000] and without the opportunity for respective trial counsel to make any factual or legal arguments ... Those determinations were divergent from those in the trial court's original Decision and Order ... On September 6, 2000 wherein the court gave further directions at odds with the determinations or modifications to both the Decision and Order and its [August 29, 2000 correspondence.] By correspondence to the Court dated October 12, 2000,

the Respondent [bank] "asserted additional liabilities due it from the Appellant" not included in the Decision and Order or the August 29, 2000 correspondence, but which the court adopted in its final judgment. [Ibid. page 7]

... The trial court issued determinations which materially contradicted and amended the Decision and Order. Neither party waived its rights to submit documentation or make legal arguments to the court at that time. [Ibid. page 9]

IV. JURISDICTIONAL DEFECTS ON THE FACE OF THE RECORD

1. The trial court's jurisdictional competency to proceed to judgment under changes and amendments of the filed Decision and Order by the court's August 29, 2000 "letter" was challenged by Plaintiff's counsel at the September 6, 2000 conference. Original objections made to the trial court on September 6, 2000 by Dimery's counsel, are in the Reproduced Joint Record on Appeal [R.125] Prior to the scheduled September 6, 2000 attorney conference, the trial court in an exercise of appellate jurisdiction amended its filed May 19, 2000 Decision, and materially altered, changed and modified the Decision's determinations [R. 120] to increase the Petitioner's alleged debt by a sum in excess of \$600,000.00, and did further determine that certain revenues collected by bank, as evidenced at trial, could not be calculated in the accounting as having been received and in so doing in fact did alter the outcome of the case.

At each point after the issuance of initial Decision and Order, the trial court substantially increased the alleged debt of the Appellant, ensuring that one would exist and eliminating any chance of the Appellant obtaining clear and unencumbered title to her residence. CPLR Section 5011 defines a judgment as the determination of the rights of the parties in an action. It is the embodiment of the decision. CPLR Section 5016(c) provides that in a nonjury trial, the decision of the judge determines the judgment. . . . [Affirmation Order to

Show Cause Appellate Division December 20, 2000 page 11]

2. "Matters respecting the description of the property in the petition in a summary proceeding go to the subject matter jurisdiction of the Court, and may be raised at any time-even on appeal. *Clarke v. Wallace Oil Company, Inc.*, 284 A.D.2d 492, 493, 727 N.Y.S.2d 139, 140 (2d Dep't 2001) "Respondent [bank] always knew that Box 338, Mahopac Falls, 10542 was a post office box and not a real property street address as it falsely stated in the Petition and Judgment (See R. 2622, 2904-2905, 2906 and 2908-2909)." [Affirmation and Memorandum in Opposition July 30, 2004 page 6 Appellate Division Second Department] "An accurate description of the premises in the petition, R.P.A.P.L. 741(3), 'is so fundamental to a summary proceeding' that an inaccuracy is a fatal defect which the court may not correct or disregard as a mere irregularity. *Papacostopulos v. Morelli*, 122 Misc.2d at 307, *affd*, 161 Misc.2d 681, 616 N.Y.S.2d 683." [Reply Brief for Plaintiff-Appellant-Respondent June 30, 2004 page 19 Appellate Division Second Department]

3. "The Bank's point that the improper venue did not invalidate the [1983] foreclosures is wrong (See pg.34, Res. Brief). The case of *Inspiration Enterprises Inc. et al. v. Inland Credit Corporation et al.*, 54 A.D.2d 839, 840, 388 N.Y.S.2d 578, 579 (1st Dep't 1976) cited in Appellant's main brief, clearly holds that a judgment entered in contravention of C.P.L.R. 507 is invalid. [Ibid. page 9]

4. "Both the Petition in the Justice Court and Respondent's Counterclaim in the Supreme Court were fatally defective and the lower court was without jurisdiction to award possession. . . ." [Ibid. page 16]

5. Notwithstanding its clear comprehension that the landlord tenant, "month-to-month tenancy and a holdover" in the bank's petition to Justice Court was a false "allegation", not in compliance with law, depriving the trial court of subject matter jurisdiction, the court knowingly without jurisdiction granted the bank's petition by Judgment. (App. 11)

V. FRAUD UPON THE COURT ON THE FACE OF THE RECORD

1. Respondent's fraud is further compounded by the fact that even though the mortgages with Petitioner's true address (as well as the true address for the Union Valley Property which was Union Valley Road, Mahopac, NY 10541) [R. 2099 and 2108], were annexed to the complaints in the [1983] foreclosures, the complaints themselves plead that "Upon information and belief, that at all times hereinafter mentioned, the defendants [sic] reside or have a place of business at P.O. Box 3338 [sic], Mahopac Falls, New York 10542" [R. 2088 and 2177]. In sum, the mortgages establish beyond a doubt that all of the mortgaged property in this case was located in Mahopac, NY 10541; none was located in Mahopac Falls 10542; yet every critical paper falsely represents to the Court that the dealings between the parties concerned non existent properties in Mahopac Falls (10542) (App. 9) Garrison, (10524) [R. 135, 136] Lake Carmel (10512) (App. 89) and Carmel, NY (10512) (App. 119)

2. In that same foreclosure proceeding, the affidavit of the Bank's Loan Officer, John Schussler attached to the Referee's report of the amount due, falsely describes the foreclosed parcel as "... residential structure which is situated on a residential parcel of land in the Town of Carmel, County of Putnam, State of New York" (R.2144). In fact the "parcel" described in the Judgment of foreclosure and sale (R. 2132-33) was actually 'two separate tax map parcels of vacant land' which later became part of the subdivision. The only parcel in the development property which was improved [by three separate structures] was the Petitioner's 15 acre parcel never mortgaged to Ulster.

3. The warrant of eviction [R. 142] prepared and subsequently executed by the bank and signed by the trial court falsely states that the denomination of the non existent property as awarded by Judgment [App. 9] is in fact a "postal street address" for other real property in possession of the Petitioner, located in a different city/hamlet, at a different address from that awarded by Judgment.

4. In the 1995 Reymert foreclosures discussed under erroneous trial proceedings, the bank falsely represented to the Court that an improperly altered mortgage attached to the foreclosure papers was a true copy of the one that had been recorded in Putnam County land records in April 1991, when in fact it was not. The alteration was made by pen. [R. 1929 1928]

5. The 1983 foreclosure against the Union Valley vacant parcels was purportedly given the Index number 731-1983. According to the County Clerk index for that file, no affidavit of service of the summons and complaint in the foreclosure was ever filed with the County Clerk [R. 2097]. Yet, a copy of an affidavit of service of the complaint on Petitioner at a false, non existent address was attached to the attorney's affidavit of regularity on the Respondent bank's motion in that case to appoint a referee to determine the amount due under the mortgage. All of the bank's foreclosure papers in that foreclosure were prepared showing Index number 734/83 and most were later altered by pen to show Index number 731/83. [R. 2087, 2093, 2098, 2122, 2126, 2127, 2134, 2137, 2138 and 2147]

CONCLUSION

For all of the reasons set forth herein, the petition for a writ of certiorari should be granted and the judgment below as appealed from should be reversed in its entirety.

Respectfully submitted,

A.L. DIMERY

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**State of New York,
Court of Appeals**

***At a session of the Court,
held at Court of Appeals
Hall in the City of Al-
bany on the seventeenth
day of November 2005***

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

2-14 Mo. No. 871
Alice Laraine Dimery,
 Appellant,
 v.
Ulster Savings Bank,
 Respondent.

A motion for reargument of motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

**State of New York,
Court of Appeals**

*At a session of the Court,
held at Court of Appeals
Hall in the City of Al-
bany on the sixth day of
July 2005*

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

2-14 Mo. No. 527
Alice Laraine Dimery,
Appellant,

v.

Ulster Savings Bank,
Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

**Supreme Court of the State of New York
Appellate Division: Second Judicial Department**

D5297
C/cf

___ AD3d ___

Argued – December 9, 2004
(Filed December 27, 2004)

ANITA R. FLORIO, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
WILLIAM F. MASTRO, JJ.

2000-10282

DECISION & ORDER

Alice Laraine Dimery, appellant-respondent,
v Ulster Savings Bank, respondent-appellant.

(Index No. 230/03)

Paul B. Bergins, White Plains, N.Y., for appellant-respondent.

ThacherProffitt & Wood, LLP, New York, N.Y. (Joel B. Harris and John P. Doherty of counsel), for respondent-appellant.

In an action, inter alia, for an accounting, which was consolidated with a summary holdover proceeding to recover possession of and to evict the plaintiff from the subject premises, the plaintiff appeals from stated portions of a judgment of the Supreme Court, Putnam County (Hickman, J.), entered October 26, 2000, which, after, among other things, a nonjury trial, dismissed the complaint and is in favor of the defendant on its counter-claims, and awarded the defendant damages representing

unpaid rent and taxes for the plaintiff's occupancy of the subject premises after termination of the parties' joint venture agreement for the period from April 1, 1991, through October 1, 2000, and the defendant cross-appeals from the same judgment.

ORDERED that the cross appeal is dismissed as abandoned, for failure to prosecute same in accordance with the rules of this court (*see* 22 NYCRR 670.8[c][e]) ; and it is further,

ORDERED that the judgment is modified, on the law, by deleting therefrom (1) the eleventh decretal paragraph, awarding the defendant damages representing unpaid rent for the period from April 1, 1991, through October 1, 2000, and (2) the fourteenth decretal paragraph, awarding the defendant damages representing unpaid taxes for the period from April 1, 1991, through October 1, 2000; as so modified, the judgment is affirmed insofar as appealed from, without costs or disbursements.

The trial court's conclusion that the March 1, 1985, agreement between the parties did not constitute a reinstatement of the plaintiffs mortgages was based on a fair interpretation of the evidence (*see Donati v Marinelli Constr. Corp.*, 247 AD2d 423; *Booth v Landau*, 103 AD2d 733; *Corcillo v Martut, Inc.*, 58 AD2d 617, *affd* 45 NY2d 878; Real Property Law § 320).

However, under the circumstances of this case, the trial court erred in awarding the defendant damages representing unpaid rent and taxes for the plaintiff's occupancy of the subject premises after termination of the parties' joint venture agreement. The defendant's petition in the summary holdover proceeding sought to recover possession of the subject premises and did not request an

award of damages for unpaid rent or taxes, and the defendant's counterclaim in the consolidated action requested damages only as a form of alternative relief in the event that it was not awarded possession of the premises and a warrant of eviction (see *Port Chester Hous. Auth. v Turner*, 189 Misc 2d 603; *Fisher Ave. Realty Partners v Hausch*, 186 Misc 2d 609). Moreover, the defendant never sought to collect rent or taxes from the plaintiff, and did not raise this issue at trial (see *Hammerstein v Henry Mtn. Corp.*, 11 AD3d 836).

FLORIO, J.P., KRAUSMAN, GOLDSTEIN and MASTRO, JJ., concur.

2000-10282

DECISION & ORDER ON MOTION

Alice Laraine Dimery, appellant-respondent,
v Ulster Savings Bank, respondent-appellant.

(Index No. 230/03)

Motion by the respondent-appellant on an appeal and cross appeal from a judgment of the Supreme Court, Putnam County, entered October 26, 2000, to strike stated portions of the appellant-respondent's brief on the ground that it refers to matter *dehors* the record. By decision and order on motion of this court dated September 27, 2004, the motion was held in abeyance and referred to the Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeal, it is

App. 6

ORDERED that the motion is denied.

FLORIO, J.P., KRAUSMAN, GOLDSTEIN and MASTRO,
JJ., concur.

ENTER:

/s/ James Edward Pelzer
James Edward Pelzer
Clerk of the Court

**Supreme Court of the State of New York
Appellate Division: Second Judicial Department**

M23288

E/sl

ANITA R. FLORIO, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
WILLIAM F. MASTRO, JJ.

2000-10282

DECISION & ORDER ON MOTION
(Filed March 28, 2005)

Alice Laraine Dimery, appellant-respondent,
v Ulster Savings Bank, respondent-appellant.

(Index No. 230/93)

Motion by the respondent-appellant for leave to reargue an appeal from a judgment of the Supreme Court, Putnam County, entered October 26, 2000, which was determined by decision and order of this court dated December 27, 2004, or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, with \$100 costs.

FLORIO, J.P., KRAUSMAN,
GOLDSTEIN and MASTRO,
JJ. concur.

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ENTER:

/s/ James Edward Pelzer
James Edward Pelzer
Clerk of the Court

**Judgment Appealed from - Hon. S. Barrett Hickman
dated October 26, 2000 with Exhibits (5-9)**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM**

ALICE LARAINÉ DIMERY,

Plaintiff,

- against -

ULSTER SAVINGS BANK,

Defendant.

Index No. 230/93

Honorable

S. Barrett Hickman

JUDGMENT

Procedural Posture

WHEREAS, on or about October 21, 1992, defendant Ulster Savings Bank (the "Bank") commenced a summary proceeding in Justice Court, Town of Carmel, County of Putnam, New York, ("Summary Proceeding") to evict plaintiff Alice Laraine Dimery ("Dimery") from a certain parcel of real property described and designated as Box 338, South Lake Boulevard, Mahopac Falls, Putnam County, New York (the "Property") (a legal description of the Property is annexed hereto as Exhibit A);

WHEREAS, on or about November 20, 1992, the Summary Proceeding was removed to Justice Court, Town of Putnam Valley, County of Putnam, New York;

WHEREAS, on or about February 10, 1993, Dimery filed the captioned action against the Bank;

WHEREAS, by Order of this Court dated June 22, 1993, the Court stayed the Bank's Summary Proceeding against Dimery and consolidated it with the captioned action;

WHEREAS, on or about August 2, 1993, the Bank filed an Answer in the captioned action containing three counterclaims wherein the Bank sought: (1) judgment awarding the Bank possession of the Property and issuing a warrant for Dimery's removal therefrom; (2) damages, and (3) costs;

WHEREAS, from December 13, 1999 to January 7, 2000, trial was held in this matter;

Decision and Interim Order

WHEREAS, the Court rendered a decision and interim order dated May 19, 2000 ("Decision and Order") in which the Court directed the parties to prepare an accounting consistent with the rulings contained therein;

WHEREAS, the Court issued a memorandum to the parties dated August 29, 2000 in which the Court provided additional guidance with respect to the preparation of the accounting;

WHEREAS, on or about September 6, 2000, the Court held a conference wherein the Court provided further guidance with respect to the preparation of the accounting;

It is NOW,

Dimery's Summons and Complaint

ORDERED, ADJUDGED AND DECREED, that Dimery's summons and complaint, verified February 10, 1993, is dismissed with prejudice in the captioned action; and it is

Bank's Summary Proceeding and Counterclaims

ORDERED, ADJUDGED AND DECREED, that the stay with respect to the Summary Proceeding is removed; and it is

ORDERED, ADJUDGED AND DECREED, that the Bank's Petition is granted in the Summary Proceeding, except with respect to attorneys' fees and the costs of this litigation; and it is

ORDERED, ADJUDGED AND DECREED, that the Bank's counterclaims are granted in the captioned action, except with respect to attorneys' fees and the costs of this litigation; and it is

Joint Venture

ORDERED, ADJUDGED AND DECREED, that the accounting attached hereto as Exhibit B, which is incorporated herein, is the final accounting of the joint venture entered into by Dimery and the Bank, which accounting shows that the expenses of the joint venture exceeded income by two hundred eighty eight thousand one hundred sixty and eighty seven cents (\$288,160.87); and it is

ORDERED, ADJUDGED AND DECREED, that the joint venture was not profitable, and that Dimery is not entitled to and shall not receive any distribution from the joint venture; and it is

The Property

ORDERED, ADJUDGED AND DECREED, that the Bank is entitled to and is hereby granted sole and exclusive possession of the Property; and it is

ORDERED, ADJUDGED AND DECREED, that a warrant of eviction (the "Warrant") evicting Dimery from the Property shall issue forthwith; and it is

ORDERED, ADJUDGED AND DECREED, that enforcement and execution of the Warrant shall be stayed ~~days from the date of entry of this Judgment;~~ [until January 10, 2001; /s/ SBH/JSC] and it is

ORDERED, ADJUDGED AND DECREED, that upon delivery of a certified copy of this Judgment together with an Execution, the office of the Sheriff of Putnam County is hereby authorized and directed to eject Dimery and any other person claiming any right, title and/or interest from the Property and to deliver possession of the Property to the Bank forthwith; and it is

Rent

ORDERED, ADJUDGED AND DECREED, that the Bank shall recover from Dimery the amount of three hundred nineteen thousand five hundred eight dollars and twenty two cents (\$319,508.22), which sum represents rent due and owing the Bank by Dimery for the period April 1, 1991 through October 1, 2000 with respect to the Property; and it is

ORDERED, ADJUDGED AND DECREED, that the accounting attached hereto as Exhibit C, which is incorporated herein, sets forth the computation of Dimery's unpaid rent to the Bank, as described in the preceding paragraph; and it is

Lakefront Parcel

ORDERED, ADJUDGED AND DECREED, that Dimery is entitled to and is hereby granted sole and exclusive possession of that certain parcel of real property on South Lake Boulevard, Mahopac Falls, Putnam County, New York described and designated in Exhibit D (the "Lakefront Parcel"); and it is

ORDERED, ADJUDGED AND DECREED, that the Bank shall recover from Dimery the amount of seven thousand seven hundred thirteen dollars and seventy six cents (\$7,713.76), which sum represents school and town taxes paid by the Bank with respect to the Lakefront Parcel for the period 1991 through October 1, 2000; and it is

ORDERED, ADJUDGED AND DECREED, that the accounting attached hereto as Exhibit E, which is incorporated herein, sets forth the computation of the taxes paid by the Bank with respect to the Lakefront Parcel, as described in the preceding paragraph; and it is

Condemnation Proceeds

ORDERED, ADJUDGED AND DECREED, that the State of New York, Department of Transportation (the "State"), shall release to the Bank the compensation payable to the Bank, which has been held in escrow by the State pending disposition of the captioned matter, as a result of the State's appropriation of a portion of the Property (Property Identification No.: 8456.06.201), which principal sum is equal to twenty eight thousand two hundred dollars (\$28,200), together with any interest; and it is

Entry of Judgment

ORDERED, ADJUDGED AND DECREED, that the Clerk of the Court is directed to forthwith enter judgment in favor of the defendant Ulster Savings Bank against plaintiff Alice Laraine Dimery in accordance herewith and defendant Ulster Savings Bank have execution thereon.

Dated: Carmel, New York
October 26, 2000

/s/ S. Barrett Hickman
Honorable
S. Barrett Hickman, J.S.C.

So entered on
October 26, 2000

/s/ Joseph F. Peloss Jr.

Ex. A – Legal Description of the Property

PARCEL I

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Carmel, County of Putnam and State of New York, bounded and described as follows:

BEGINNING at a cross-cut on the seawall of the southerly shore of Lake Mahopac, said cross-cut being on the dividing line between lands now or formerly of Stroll and lands now or formerly of Keith Estate; thence, along said seawall, South 39° 32' 20" East, 49.55 feet; thence South 66° 58' 40" East, 5.63 feet; thence leaving said seawall, South 20° 56' 00" West, 32.86 feet to a point on the north side of Lake Boulevard; thence North 71° 34' 50"

West, 22.66 feet; thence North 70° 52' 40" West, 31.63 feet to a cross-cut on the dividing line between lands of Stroll and Keith; thence North 19° 24' 00" East, 34.67 feet to the point or place of beginning.

PARCEL II

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Carmel, County of Putnam and State of New York, bounded and described as follows:

BEGINNING at a point on the south side of Lake Boulevard, which point is the intersection of the south side of Lake Boulevard with the dividing line between lands now or formerly of Strull and lands now or formerly of Keith Estate; continuing thence along said dividing line, South 19° 24' 00" West, 279.71 feet; thence South 71° 35' 00" East, 74.58 feet; thence North 14° 38' 10" East, 89.84 feet to a cross-cut on the face of a retaining wall; thence South 85° 15' 40" East, 43.00 feet to a stake; thence North 86° 02' 50" East, 86.91 feet to a V-cut on the top of a retaining wall on the west side of Lake Boulevard; thence, along the front of said retaining wall and along the side of Lake Boulevard, North 11° 18' 40" West, 112.64 feet; North 15° 44' 10" West, 50.30 feet; North 26° 19' 50" West, 9.83 feet; North 41° 00' 20" West, 17.97 feet; North 45° 31' 45" West, 7.67 feet; North 56° 00' 20" West, 14.11 feet; North 68° 44' 20" West, 18.79 feet; North 75° 02' 15" West, 26.10 feet; South 87° 59' 40" West, 5.14 feet; South 65° 14' 55" West, 3.39 feet; North 70° 36' 00" West, 10.70 feet to the point or place of beginning.

TOGETHER WITH right of the party of the first part in, and subject to rights, if any, of owners of adjoining land, now or formerly of Keith, to use of common driveway running along westerly dividing line between above described property and Keith property.

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Ex. B - Final Joint Venture Accounting

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0 000369963

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
12/18/84	0.00	0	0.00		0.00	CONTRACT	0.00	364,926.14	364,926.14
12/18/84	364,926.14	0	0.00		364,926.14	DIMERY- RENTAL CHARGE	0.00	1,878.75	366,804.89
12/31/84	366,804.89	13	1,763.68	1,763.68	368,568.57	COMPOUND INTEREST	0.00	0.00	368,568.57
TOTAL 1984		13	1,763.68	1,763.68			0.00	366,804.89	368,568.57
CUMULATIVE TOTAL TO DATE			1,763.68	1,763.68			0.00	366,804.89	368,568.57

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ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000399863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/18/85	368,568.57	18	2,453.76		368,568.57	DIMERY- RENTAL CHARGE	0.00	1,878.75	370,447.32
1/31/85	370,447.32	13	1,781.19	4,234.95	374,682.27	COMPOUND INTEREST	0.00	0.00	374,682.27
2/15/85	374,682.27	15	2,078.72		374,682.27	RENT - PORCELLI	1,062.50	0.00	373,619.77
2/18/85	373,619.77	3	414.56		373,619.77	DIMERY- RENTAL CHARGE	0.00	1,878.75	375,498.52
2/20/85	375,498.52	2	277.77		375,498.52	RENT - BAY	2,850.00	0.00	372,648.52
2/28/85	372,648.52	8	1,102.63	3,873.68	376,522.20	COMPOUND INTEREST	0.00	0.00	376,522.20
3/15/85	376,522.20	15	2,088.92		376,522.20	LAURENT PC-STMT #1 (ENGINEER)	0.00	3,464.60	379,986.80
3/18/85	379,986.80	3	421.63		379,986.80	DIMERY- RENTAL CHARGE	0.00	1,878.75	381,865.55
3/19/85	381,865.55	1	141.24		381,865.55	RENT - PORCELLI	425.00	0.00	381,440.55
3/22/85	381,440.55	3	423.24		381,440.55	RENT - BAY	950.00	0.00	380,490.55
3/31/85	380,490.55	9	1,266.55	4,341.60	384,832.14	COMPOUND INTEREST	0.00	0.00	384,832.14
4/18/85	384,832.14	18	2,562.03		384,832.14	DIMERY- RENTAL CHARGE	0.00	1,878.75	386,710.89
4/29/85	386,710.89	11	1,573.33		386,710.89	RENT - PORCELLI	399.00	0.00	386,311.89
4/29/85	386,311.89	0	0.00		386,311.89	RENT - BAY	950.00	0.00	385,361.89
4/30/85	385,361.89	1	142.53	4,277.89	389,639.79	COMPOUND INTEREST	0.00	0.00	389,639.79
5/9/85	389,639.79	9	1,297.02		389,639.79	LAURENT PC-STMT #2 (ENGINEER)	0.00	1,385.60	391,025.39
5/13/85	391,025.39	4	578.50		391,025.39	TAXES - 85	0.00	1,490.56	392,515.95
5/13/85	392,515.95	0	0.00		392,515.95	TAXES - 85	0.00	173.17	392,689.12
5/13/85	392,689.12	0	0.00		392,689.12	PLUMBER	0.00	523.50	393,212.62
5/17/85	393,212.62	4	581.74		393,212.62	RENT - BAY	950.00	0.00	392,262.62
5/18/85	392,262.62	1	145.08		392,262.62	DIMERY- RENTAL CHARGE	0.00	1,878.75	394,141.37
5/20/85	394,141.37	2	291.56		394,141.37	RENT - PORCELLI	425.00	0.00	393,716.37
5/31/85	393,716.37	11	1,601.83	4,495.73	398,212.10	COMPOUND INTEREST	0.00	0.00	398,212.10
6/18/85	398,212.10	18	2,651.11		398,212.10	DIMERY- RENTAL CHARGE	0.00	1,878.75	400,090.85
6/20/85	400,090.85	2	295.96		400,090.85	RENT - PORCELLI	425.00	0.00	399,665.85
6/30/85	399,665.85	10	1,478.22	4,425.28	404,091.14	COMPOUND INTEREST	0.00	0.00	404,091.14

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ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0 000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
7/15/85	404,091.14	15	2,241.88		404,091.14	RENT - BAY	950.00	0.00	403,141.14
7/18/85	403,141.14	3	447.32		403,141.14	DIMERY - RENTAL CHARGE	0.00	1,878.75	405,019.89
7/31/85	405,019.89	13	1,947.42	4,636.62	409,656.51	COMPOUND INTEREST	0.00	0.00	409,656.51
8/1/85	409,656.51	1	151.52		409,656.51	RENT - BAY	950.00	0.00	408,706.51
8/18/85	408,706.51	17	2,569.81		408,706.51	DIMERY - RENTAL CHARGE	0.00	751.56	409,458.07
8/31/85	409,458.07	13	1,968.76		409,458.07	SIMPLE INTEREST	0.00	0.00	409,458.07
9/5/85	409,458.07	5	757.22		409,458.07	RENT - PORCELLI	425.00	0.00	409,033.07
9/11/85	409,033.07	6	907.72		409,033.07	TOWN OF CARMEL	0.00	625.00	409,658.07
9/26/85	409,658.07	15	2,272.76		409,658.07	RENT - PORCELLI	425.00	0.00	409,233.07
9/30/85	409,233.07	4	605.44		409,233.07	SIMPLE INTEREST	0.00	0.00	409,233.07
10/1/85	409,233.07	1	151.36		409,233.07	SCHOOL TAX - 85	0.00	3,004.30	412,237.37
10/1/85	412,237.37	0	0.00		412,237.37	SCHOOL TAX - 85	0.00	504.80	412,742.17
10/4/85	412,742.17	3	457.97		412,742.17	LAURENT PC-STMT #5(ENGINEER)	0.00	4,377.60	417,119.77
10/4/85	417,119.77	0	0.00		417,119.77	DIMERY - OUT OF POCKET EXP	50.00	0.00	417,069.77
10/31/85	417,069.77	27	4,164.98		417,069.77	SIMPLE INTEREST	0.00	0.00	417,069.77
11/6/85	417,069.77	6	925.55		417,069.77	DIMERY - OUT OF POCKET EXP	500.00	0.00	416,569.77
11/30/85	416,569.77	24	3,697.77		416,569.77	SIMPLE INTEREST	0.00	0.00	416,569.77
12/10/85	416,569.77	10	1,540.74		416,569.77	DIMERY - OUT OF POCKET EXP	50.00	0.00	416,519.77
12/18/85	416,519.77	8	1,232.44		416,519.77	DIMERY - OUT OF POCKET EXP	50.00	0.00	416,469.77
12/26/85	416,469.77	8	1,232.29		416,469.77	DIMERY - OUT OF POCKET EXP	375.00	0.00	416,094.77
12/27/85	416,094.77	1	153.90		416,094.77	LAURENT P.C.(ENGINEER)	0.00	4,754.10	420,848.87
12/31/85	420,848.87	4	622.63		420,848.87	RENT - PORCELLI	1,275.00	0.00	419,573.87
TOTAL 1985		365	53,698.63	30,285.76			13,486.50	34,206.04	419,573.87
CUMULATIVE TOTAL TO DATE			55,462.30	32,049.44			13,486.50	401,010.93	442,986.73

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ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/6/86	419,573.87	6	931.11		419,573.87	RENT - BAY	3,800.00	0.00	415,773.87
1/29/86	415,773.87	23	3,536.93		415,773.87	TOWN TAX - 86	0.00	244.01	416,017.88
1/29/86	416,017.88	0	0.00		416,017.88	TOWN TAX - 86	0.00	1,354.90	417,372.78
1/30/86	417,372.78	1	154.37		417,372.78	LAURENT PC-STMT #9(ENGINEER)	0.00	2,062.00	419,434.78
1/31/86	419,434.78	1	155.13		419,434.78	RENT - PORCELLI	67.50	0.00	419,367.28
2/24/86	419,367.28	24	3,722.60		419,367.28	RENT - PORCELLI	425.00	0.00	418,942.28
2/28/86	418,942.28	4	619.80		418,942.28	ACCRUED INTEREST	0.00	0.00	418,942.28
3/17/86	418,942.28	17	2,634.17		418,942.28	RENT - BAY	950.00	0.00	417,992.28
3/19/86	417,992.28	2	309.20		417,992.28	RENT - PORCELLI	425.00	0.00	417,567.28
3/24/86	417,567.28	5	772.21		417,567.28	DIMERY - OUT OF POCKET EXP	120.00	0.00	417,447.28
3/28/86	417,447.28	4	617.59		417,447.28	DIMERY - OUT OF POCKET EXP	378.73	0.00	417,068.55
3/31/86	417,068.55	3	462.77		417,068.55	SIMPLE INTEREST	0.00	0.00	417,068.55
4/4/86	417,068.55	4	617.03		417,068.55	DIMERY - OUT OF POCKET EXP	200.00	0.00	416,868.55
4/24/86	416,868.55	20	3,083.69		416,868.55	RENT - PORCELLI	425.00	0.00	416,443.55
4/25/86	416,443.55	1	154.03		416,443.55	LAURENT PC-STMT #10(ENGINEER)	0.00	796.00	417,239.55
4/30/86	417,239.55	5	771.61		417,239.55	SIMPLE INTEREST	0.00	0.00	417,239.55
5/1/86	417,239.55	1	154.32		417,239.55	DIMERY - OUT OF POCKET EXP	120.00	0.00	417,119.55
5/13/86	417,119.55	12	1,851.33		417,119.55	DIMERY - OUT OF POCKET EXP	658.91	0.00	416,460.64
5/15/86	416,460.64	2	308.07		416,460.64	DIMERY - OUT OF POCKET EXP	150.00	0.00	416,310.64
5/16/86	416,310.64	1	153.98		416,310.64	DIMERY - OUT OF POCKET EXP	1,623.29	0.00	414,687.35
5/20/86	414,687.35	4	613.51		414,687.35	DIMERY - OUT OF POCKET EXP	131.85	0.00	414,555.50
5/20/86	414,555.50	0	0.00		414,555.50	DIMERY - OUT OF POCKET EXP	649.50	0.00	413,906.00
5/26/86	413,906.00	6	918.53		413,906.00	DIMERY - OUT OF POCKET EXP	1,110.25	0.00	412,795.75
5/31/86	412,795.75	5	763.39		412,795.75	SIMPLE INTEREST	0.00	0.00	412,795.75
6/2/86	412,795.75	2	305.36		412,795.75	DIMERY - OUT OF POCKET EXP	240.00	0.00	412,555.75
6/13/86	412,555.75	11	1,678.48		412,555.75	DIMERY - OUT OF POCKET EXP	1,728.32	0.00	410,827.43
6/17/86	410,827.43	4	607.80		410,827.43	DIMERY - OUT OF POCKET EXP	673.00	0.00	410,154.43
6/20/86	410,154.43	3	455.10		410,154.43	RENT - PORCELLI	425.00	0.00	409,729.43
6/23/86	409,729.43	3	454.63		409,729.43	TOWN TAX - 83 #1	0.00	1,572.84	411,402.27
6/23/86	411,402.27	0	0.00		411,402.27	TOWN TAX - 84 #1	0.00	6,583.80	417,986.07
6/23/86	417,986.07	0	0.00		417,986.07	TOWN TAX - 85 #1	9.33	5,989.20	423,964.94
6/23/86	423,964.94	0	0.00		423,964.94	TOWN TAX - 86 #1	10.32	5,466.67	429,443.29
6/26/86	429,443.29	3	475.51		429,443.29	DIMERY - OUT OF POCKET EXP	30.00	0.00	429,413.29
6/26/86	429,413.29	0	0.00		429,413.29	DIMERY - OUT OF POCKET EXP	1,708.50	0.00	427,644.79
6/30/86	427,644.79	4	632.68		427,644.79	SIMPLE INTEREST	0.00	0.00	427,644.79

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
7/29/86	427,644.79	29	4,586.93		427,644.79	RENT - PORCELLI	425.00	0.00	427,219.79
7/31/86	427,219.79	2	316.03	56,231.75	483,451.54	SIMPLE INTEREST	0.00	0.00	483,451.54
8/20/86	483,451.54	20	3,576.22		483,451.54	DIMERY - OUT OF POCKET EXP	85.74	0.00	483,365.80
8/20/86	483,365.80	0	0.00		483,365.80	DIMERY - OUT OF POCKET EXP	183.72	0.00	483,182.08
8/20/86	483,182.08	0	0.00		483,182.08	DIMERY - OUT OF POCKET EXP	170.66	0.00	483,011.42
8/20/86	483,011.42	0	0.00		483,011.42	DIMERY - OUT OF POCKET EXP	115.48	0.00	482,895.94
8/20/86	482,895.94	0	0.00		482,895.94	DIMERY - OUT OF POCKET EXP	112.91	0.00	482,783.03
8/20/86	482,783.03	0	0.00		482,783.03	DIMERY - OUT OF POCKET EXP	167.90	0.00	482,615.13
8/20/86	482,615.13	0	0.00		482,615.13	DIMERY - OUT OF POCKET EXP	265.82	0.00	482,349.51
8/25/86	482,349.51	5	892.02		482,349.51	RENT - PORCELLI	425.00	0.00	481,924.51
8/31/86	481,924.51	6	1,069.48		481,924.51	SIMPLE INTEREST	0.00	0.00	481,924.51
9/10/86	481,924.51	10	1,782.46		481,924.51	LAURENT PC(ENGINEER)	0.00	897.85	482,822.36
9/23/86	482,822.36	13	2,321.52		482,822.36	RENT - PORCELLI	425.00	0.00	482,397.36
9/30/86	482,397.36	7	1,248.95		482,397.36	SIMPLE INTEREST	0.00	0.00	482,397.36
10/17/86	482,397.36	17	3,033.16		482,397.36	LAURENT PC-STMT #14(ENGINEER)	0.00	2,066.00	484,463.36
10/28/86	484,463.36	11	1,971.04		484,463.36	SCHOOL TAX - 86	0.00	524.22	484,987.58
10/28/86	484,987.58	0	0.00		484,987.58	SCHOOL TAX - 86	0.00	3,119.94	488,107.52
10/28/86	488,107.52	0	0.00		488,107.52	SCHOOL TAX - 86	0.00	3,464.65	491,572.17
10/31/86	491,572.17	3	545.44		491,572.17	SIMPLE INTEREST	0.00	0.00	491,572.17
11/7/86	491,572.17	7	1,272.70		491,572.17	LAURENT PC-STMT #15(ENGINEER)	0.00	2,684.00	494,256.17
11/14/86	494,256.17	7	1,279.65		494,256.17	GORR ASSOC (SURVEYOR)	0.00	1,396.44	495,652.61
11/21/86	495,652.61	7	1,283.26		495,652.61	LAURENT PC-STMT #16(ENGINEER)	0.00	1,142.00	496,794.61
11/30/86	496,794.61	9	1,653.71		496,794.61	SIMPLE INTEREST	0.00	0.00	496,794.61
12/30/86	496,794.61	30	5,512.38		496,794.61	LAURENT PC-STMT #17(ENGINEER)	0.00	2,166.00	498,960.61
12/31/86	498,960.61	1	184.55		498,960.61	SIMPLE INTEREST	0.00	0.00	498,960.61
TOTAL 1986		365	60,445.40	56,231.75			18,496.53	41,651.52	498,960.61
CUMULATIVE TOTAL TO DATE			115,907.71	88,281.19			31,983.03	442,662.45	526,567.13

App. 22

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/5/87	498,960.61	5	922.74		498,960.61	CARMEL (REC FEE)	0.00	4,500.00	503,460.61
1/8/87	503,460.61	3	558.63		503,460.61	RENT - PORCELLI	1,275.00	0.00	502,185.61
1/27/87	502,185.61	19	3,529.06		502,185.61	RENT - PORCELLI	425.00	0.00	501,760.61
1/31/87	501,760.61	4	742.33		501,760.61	SIMPLE INTEREST	0.00	0.00	501,760.61
2/17/87	501,760.61	17	3,154.91		501,760.61	GORR ASSOC (SURVEYOR)	0.00	475.00	502,235.61
2/17/87	502,235.61	0	0.00		502,235.61	DE ASSOC (SITE DESIGN ARCHITEC	0.00	1,970.00	504,205.61
2/20/87	504,205.61	3	559.46		504,205.61	RENT - PORCELLI	425.00	0.00	503,780.61
2/26/87	503,780.61	8	1,490.64		503,780.61	SIMPLE INTEREST	0.00	0.00	503,780.61
3/2/87	503,780.61	2	372.66		503,780.61	DIMERY'S WETLANDS FINE	0.00	2,000.00	505,780.61
3/2/87	505,780.61	0	0.00		505,780.61	LAURENT PC-STMT #18(ENGINEER)	0.00	3,367.00	509,147.61
3/2/87	509,147.61	22	4,142.93		509,147.61	RENT - PORCELLI	425.00	0.00	508,722.61
3/2/87	508,722.61	1	188.16		508,722.61	CARMEL (REC FEE)	0.00	1,500.00	510,222.61
3/2/87	510,222.61	2	377.42		510,222.61	TOM PETRO PLUMBING	0.00	3,950.00	514,172.61
3/31/87	514,172.61	4	700.69		514,172.61	SIMPLE INTEREST	0.00	0.00	514,172.61
3/31/87	514,172.61	2	300.35		514,172.61	LAURENT PC-STMT #19(ENGINEER)	0.00	1,398.00	515,570.61
4/30/87	515,570.61	28	5,339.33		515,570.61	SIMPLE INTEREST	0.00	0.00	515,570.61
5/20/87	515,570.61	20	3,813.81		515,570.61	DIMERY - OUT OF POCKET EXP	80.04	0.00	515,490.57
5/31/87	515,490.57	11	2,097.27		515,490.57	SIMPLE INTEREST	0.00	0.00	515,490.57
6/1/87	515,490.57	1	190.86		515,490.57	WOLLER ROOFING	0.00	200.00	515,690.57
6/1/87	515,690.57	0	0.00		515,690.57	MEWINGS NURSERY	0.00	500.35	516,190.92
6/1/87	516,190.92	0	0.00		516,190.92	TOM PETRO PLUMBING	0.00	5,160.51	521,351.43
6/8/87	521,351.43	7	1,349.80		521,351.43	CARMEL - REC FEE	0.00	5,000.00	526,351.43
6/8/87	526,351.43	0	0.00		526,351.43	LAURENT PC-STMT #20(ENGINEER)	0.00	1,230.00	527,581.43
6/9/87	527,581.43	1	195.13		527,581.43	CARMEL	0.00	7,875.00	535,456.43
6/9/87	535,456.43	0	0.00		535,456.43	LOMA CONTRACT	375,000.00	0.00	160,456.43
6/29/87	160,456.43	20	1,186.94		160,456.43	RESTORATION PLUS(DEBRIS REMO	0.00	185.00	160,641.43
6/29/87	160,641.43	0	0.00		160,641.43	HANDY RENT ALL(EXCAVATOR)	0.00	758.24	161,399.67
6/29/87	161,399.67	0	0.00		161,399.67	PUTNAM COUNTY DOH	0.00	500.00	161,899.67
6/30/87	161,899.67	1	59.88		161,899.67	SIMPLE INTEREST	0.00	0.00	161,899.67

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
7/3/87	161,699.67	3	179.64		161,899.67	MARSHALL & STERLING (BOND)	0.00	3,780.00	165,679.67
7/6/87	165,679.67	3	183.84		165,679.67	ROBERT SCUDERI(LAWN MAINT)	0.00	250.00	165,929.67
7/24/87	165,929.67	18	1,104.68		165,929.67	LAURENT PC-STMT #22(ENGINEER)	0.00	3,548.50	169,478.17
7/31/87	169,478.17	7	438.79	60,946.27	230,424.43	SIMPLE INTEREST	0.00	0.00	230,424.43
8/6/87	230,424.43	6	511.35		230,424.43	ROBERT SCUDERI(LAWN MAINT)	0.00	120.00	230,544.43
8/6/87	230,544.43	0	0.00		230,544.43	ALL COUNTY PAINTING	0.00	2,700.00	233,244.43
8/10/87	233,244.43	4	345.07		233,244.43	TOWN OF CARMEL	0.00	10,350.00	243,594.43
8/10/87	243,594.43	0	0.00		243,594.43	ALL COUNTY PAINTING	0.00	3,065.00	246,659.43
8/17/87	246,659.43	7	638.61		246,659.43	DIMERY - OUT OF POCKET EXP	106.02	0.00	246,553.41
8/17/87	246,553.41	0	0.00		246,553.41	DIMERY - OUT OF POCKET EXP	103.68	0.00	246,449.73
8/18/87	246,449.73	1	91.15		246,449.73	MARSHALL & STERLING	0.00	4,968.00	251,417.73
8/31/87	251,417.73	13	1,208.87		251,417.73	SIMPLE INTEREST	0.00	0.00	251,417.73
9/29/87	251,417.73	29	2,696.71		251,417.73	GORR. ASSOC.	0.00	400.00	251,817.73
9/29/87	251,817.73	0	0.00		251,817.73	RESTORATION PLUS	0.00	495.00	252,312.73
9/29/87	252,312.73	0	0.00		252,312.73	ROBERT SCUDERI	0.00	120.00	252,432.73
9/30/87	252,432.73	1	93.37		252,432.73	SIMPLE INTEREST	0.00	0.00	252,432.73
10/7/87	252,432.73	7	653.56		252,432.73	SCHOOL TAX - 87	0.00	3,307.98	255,740.71
10/7/87	255,740.71	0	0.00		255,740.71	SCHOOL TAX - 87	0.00	3,673.47	259,414.18
10/7/87	259,414.18	0	0.00		259,414.18	SCHOOL TAX - 87	0.00	555.82	259,970.00
10/30/87	259,970.00	23	2,211.53		259,970.00	ROBERT SCUDERI	0.00	180.00	260,150.00
10/31/87	260,150.00	1	96.22		260,150.00	SIMPLE INTEREST	0.00	0.00	260,150.00
11/16/87	260,150.00	16	1,539.52		260,150.00	DIMERY - REIMBURSEMENT	0.00	199.90	260,349.90
11/30/87	260,349.90	14	1,348.11		260,349.90	SIMPLE INTEREST	0.00	0.00	260,349.90
12/11/87	260,349.90	11	1,059.23		260,349.90	LAURENT P.C. - STMT #23	0.00	3,568.00	263,917.90
12/31/87	263,917.90	20	1,952.27		263,917.90	SIMPLE INTEREST	0.00	0.00	263,917.90
TOTAL 1987		365	47,765.32	60,946.27			377,839.74	81,850.77	263,917.90
CUMULATIVE TOTAL TO DATE			163,673.03	149,227.45			409,822.77	524,513.22	278,363.48

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/6/88	263,917.90	6	585.68		263,917.90	HOME OWNERS PETRO	0.00	895.65	264,813.85
1/12/88	264,813.85	6	587.87		264,813.85	TOWN TAX - 88	0.00	1,406.24	266,220.09
1/12/88	266,220.09	0	0.00		266,220.09	TOWN TAX - 88	0.00	1,471.76	267,691.85
1/12/88	267,691.85	0	0.00		267,691.85	TOWN TAX - 88	0.00	252.40	267,944.25
1/31/88	267,944.25	19	1,882.05		267,944.25	SIMPLE INTEREST	0.00	0.00	267,944.25
2/29/88	267,944.25	29	2,873.08		267,944.25	SIMPLE INTEREST	0.00	0.00	267,944.25
3/31/88	267,944.25	31	3,072.18		267,944.25	SIMPLE INTEREST	0.00	0.00	267,944.25
4/30/88	267,944.25	30	2,973.08		267,944.25	SIMPLE INTEREST	0.00	0.00	267,944.25
5/23/88	267,944.25	23	2,279.38		267,944.25	ROBERT SCUDERI	0.00	100.00	268,044.25
5/23/88	268,044.25	0	0.00		268,044.25	AMER. APPL REPAIR	0.00	74.38	268,118.63
5/25/88	268,118.63	2	198.33		268,118.63	OURIEN ELECTRIC	0.00	65.00	268,183.63
5/26/88	268,183.63	1	99.19		268,183.63	DIMERY - OUT OF POCKET EXP	50.00	0.00	268,133.63
5/27/88	268,133.63	1	99.17		268,133.63	DIMERY - OUT OF POCKET EXP	31.01	0.00	268,100.60
5/27/88	268,100.60	0	0.00		268,100.60	DIMERY - OUT OF POCKET EXP	32.25	0.00	268,068.31
5/27/88	268,068.31	0	0.00		268,068.31	BRENNAN - DEMO	0.00	1,125.00	269,193.31
5/27/88	269,193.31	0	0.00		269,193.31	DIMERY - MOWING	0.00	60.00	269,253.31
5/27/88	269,253.31	0	0.00		269,253.31	MAHOPAC GLASS	0.00	417.31	269,670.62
5/31/88	269,670.62	4	398.96		269,670.62	SIMPLE INTEREST	0.00	0.00	269,670.62
6/13/88	269,670.62	13	1,290.64		269,670.62	BRENNAN - DEMO	0.00	1,425.00	271,095.62
6/13/88	271,095.62	0	0.00		271,095.62	ROBERT SCUDERI	0.00	100.00	271,195.62
6/30/88	271,195.62	17	1,705.19		271,195.62	SIMPLE INTEREST	0.00	0.00	271,195.62

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
7/31/88	271,195.62	31	3,109.46	35,607.43	306,803.05	SIMPLE INTEREST	0.00	0.00	306,803.05
8/19/88	306,803.05	19	2,156.03		306,803.05	DIMERY - OUT OF POCKET EXP	33.90	0.00	306,769.15
8/19/88	306,769.15	0	0.00		306,769.15	DIMERY - OUT OF POCKET EXP	33.22	0.00	306,735.93
8/26/88	306,735.93	7	794.15		306,735.93	MARSHALL & STERLING	0.00	8,746.00	315,483.93
8/30/88	315,483.93	4	466.74		315,483.93	ROBERT SCUDERI	0.00	240.00	315,723.93
8/31/88	315,723.93	1	116.77		315,723.93	SIMPLE INTEREST	0.00	0.00	315,723.93
9/16/88	315,723.93	16	1,868.39		315,723.93	ROBERT SCUDERI	0.00	240.00	315,963.93
9/20/88	315,963.93	4	457.45		315,963.93	SCHOOL TAX - 88	0.00	2,553.37	318,517.30
9/20/88	318,517.30	0	0.00		318,517.30	SCHOOL TAX - 88	0.00	3,482.52	321,999.82
9/20/88	321,999.82	0	0.00		321,999.82	SCHOOL TAX - 88	0.00	2,220.02	324,219.84
9/20/88	324,219.84	0	0.00		324,219.84	SCHOOL TAX - 88	0.00	585.15	324,804.99
10/24/88	324,804.99	34	4,084.53		324,804.99	PEOPLES OIL	0.00	721.17	325,526.16
10/24/88	325,526.16	0	0.00		325,526.16	ROBERT SCUDERI	0.00	120.00	325,646.16
10/31/88	325,646.16	7	843.11		325,646.16	ROBERT SCUDERI	0.00	120.00	325,766.16
11/30/88	325,766.16	30	3,614.67		325,766.16	SIMPLE INTEREST	0.00	0.00	325,766.16
12/5/88	325,766.16	5	692.44		325,766.16	RYAN INS - HAZARD	0.00	1,462.00	327,228.16
12/31/88	327,228.16	26	3,146.77		327,228.16	SIMPLE INTEREST	0.00	0.00	327,228.16
TOTAL 1988		366	39,322.92	35,607.43			182.44	27,885.27	327,228.16
CUMULATIVE TOTAL TO DATE			202,995.95	184,834.88			410,005.21	552,396.49	345,389.23

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369663

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/20/89	327,228.16	20	2,420.59		327,228.16	TOWN TAX - 89	0.00	1,632.65	328,860.81
1/20/89	328,860.81	0	0.00		328,860.81	TOWN TAX - 89	0.00	967.41	329,848.22
1/20/89	329,848.22	0	0.00		329,848.22	TOWN TAX - 89	0.00	293.53	330,141.75
1/20/89	330,141.75	0	0.00		330,141.75	TOWN TAX - 89	0.00	1,135.69	331,277.44
1/31/89	331,277.44	11	1,347.80		331,277.44	SIMPLE INTEREST	0.00	0.00	331,277.44
2/28/89	331,277.44	28	3,430.76		331,277.44	SIMPLE INTEREST	0.00	0.00	331,277.44
3/6/89	331,277.44	6	735.16		331,277.44	DYNAMIC FUEL	0.00	782.81	332,060.25
3/31/89	332,060.25	25	3,070.42		332,060.25	SIMPLE INTEREST	0.00	0.00	332,060.25
4/30/89	332,060.25	30	3,684.50		332,060.25	SIMPLE INTEREST	0.00	0.00	332,060.25
5/31/89	332,060.25	31	3,807.32		332,060.25	SIMPLE INTEREST	0.00	0.00	332,060.25
6/5/89	332,060.25	5	614.08		332,060.25	ROBERT SCUDERI	0.00	240.00	332,300.25
6/20/89	332,300.25	15	1,843.58		332,300.25	MAHOPAC GLASS	0.00	230.59	332,530.84
6/26/89	332,530.84	6	737.95		332,530.84	WOLLER ROOFING	0.00	1,500.00	334,030.84
6/28/89	334,030.84	2	247.09		334,030.84	ROBERT SCUDERI	0.00	120.00	334,150.84
6/28/89	334,150.84	0	0.00		334,150.84	READY PAINTERS	0.00	427.00	334,577.84
6/30/89	334,577.84	2	247.50		334,577.84	MARSHALL & STERLING	0.00	2,484.00	337,061.84

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
7/13/89	337,061.84	13	1,620.67		337,061.84	ROBERT SCUDERI	0.00	120.00	337,181.84
7/31/89	337,181.84	18	2,244.80	44,213.30	381,395.14	SIMPLE INTEREST	0.00	0.00	381,395.14
8/11/89	381,395.14	11	1,551.70		381,395.14	ROBERT SCUDERI	0.00	240.00	381,635.14
8/25/89	381,635.14	14	1,976.14		381,635.14	BEE & JAY PLUMBING	0.00	850.00	382,485.14
9/15/89	382,485.14	21	2,970.81		382,485.14	SCHOOL TAX - 89	0.00	3,692.13	386,177.27
9/15/89	386,177.27	0	0.00		386,177.27	SCHOOL TAX - 89	0.00	2,353.64	388,530.91
9/15/89	388,530.91	0	0.00		388,530.91	SCHOOL TAX - 89	0.00	620.37	389,151.28
9/15/89	389,151.28	0	0.00		389,151.28	SCHOOL TAX - 89	0.00	2,707.10	391,858.38
9/30/89	391,858.38	15	2,174.01		391,858.38	SIMPLE INTEREST	0.00	0.00	391,858.38
10/31/89	391,858.38	31	4,492.95		391,858.38	SIMPLE INTEREST	0.00	0.00	391,858.38
11/30/89	391,858.38	30	4,348.02		391,858.38	SIMPLE INTEREST	0.00	0.00	391,858.38
12/1/89	391,858.38	1	144.93		391,858.38	LOMA - UNRECEIVED MONIES	0.00	187,500.00	579,358.38
12/13/89	579,358.38	12	2,571.40		579,358.38	BROKER FEE	0.00	13,740.00	593,098.38
12/13/89	593,098.38	0	0.00		593,098.38	SALE OF HOUSE - LOT 1	228,084.00	0.00	365,014.38
12/31/89	365,014.38	18	2,430.10		365,014.38	SIMPLE INTEREST	0.00	0.00	365,014.38
TOTAL 1989		365	48,712.29	44,213.30			228,084.00	221,656.92	365,014.38
CUMULATIVE TOTAL TO DATE			251,708.24	229,048.18			638,089.21	774,055.41	387,674.44

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/10/90	365,014.38	10	1,350.25		365,014.38	TOWN TAX - 90	0.00	1,828.70	366,843.08
1/10/90	366,843.08	0	0.00		366,843.08	TOWN TAX - 90	0.00	328.50	367,169.58
1/10/90	367,169.58	0	0.00		367,169.58	TOWN TAX - 90	0.00	1,024.43	368,194.01
1/31/90	368,194.01	21	2,859.81		368,194.01	SIMPLE INTEREST	0.00	0.00	368,194.01
2/28/90	368,194.01	28	3,813.08		368,194.01	SIMPLE INTEREST	0.00	0.00	368,194.01
3/31/90	368,194.01	31	4,221.62		368,194.01	SIMPLE INTEREST	0.00	0.00	368,194.01
4/30/90	368,194.01	30	4,085.44		368,194.01	SIMPLE INTEREST	0.00	0.00	368,194.01
5/31/90	368,194.01	31	4,221.62		368,194.01	SIMPLE INTEREST	0.00	0.00	368,194.01
6/30/90	368,194.01	30	4,085.44		368,194.01	SIMPLE INTEREST	0.00	0.00	368,194.01
7/31/90	368,194.01	31	4,221.62	51,518.74	419,712.75	SIMPLE INTEREST	0.00	0.00	419,712.75
8/18/90	419,712.75	18	2,794.25		419,712.75	SALE - LOT 4	59,757.00	0.00	359,955.75
8/31/90	359,955.75	13	1,730.75		359,955.75	SIMPLE INTEREST	0.00	0.00	359,955.75
9/26/90	359,955.75	26	3,461.49		359,955.75	SCHOOL TAX - 90	0.00	3,934.68	363,890.44
9/26/90	363,890.44	0	0.00		363,890.44	SCHOOL TAX - 90	0.00	454.77	364,345.21
9/26/90	364,345.21	0	0.00		364,345.21	SCHOOL TAX - 90	0.00	2,311.93	366,657.14
9/30/90	366,657.14	4	542.45		366,657.14	SIMPLE INTEREST	0.00	0.00	366,657.14
10/31/90	366,657.14	31	4,204.00		366,657.14	SIMPLE INTEREST	0.00	0.00	366,657.14
11/30/90	366,657.14	30	4,068.39		366,657.14	SIMPLE INTEREST	0.00	0.00	366,657.14
12/31/90	366,657.14	31	4,204.00		366,657.14	SIMPLE INTEREST	0.00	0.00	366,657.14
TOTAL 1990		365	49,864.01	51,518.74			59,757.00	9,881.02	366,657.14
CUMULATIVE TOTAL TO DATE			301,572.25	280,566.92			697,846.21	783,938.43	387,682.47

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000309663

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/18/91	366,657.14	18	2,441.03		366,657.14	TOWN TAX - 91	0.00	2,003.16	368,660.30
1/18/91	368,660.30	0	0.00		368,660.30	TOWN TAX - 91	0.00	244.78	368,905.08
1/18/91	368,905.08	0	0.00		368,905.08	TOWN TAX - 91	0.00	1,005.72	369,910.80
1/31/91	369,910.80	13	1,778.61		369,910.80	SIMPLE INTEREST	0.00	0.00	369,910.80
2/28/91	369,910.80	28	3,830.86		369,910.80	SIMPLE INTEREST	0.00	0.00	369,910.80
3/26/91	369,910.80	26	3,557.22		369,910.80	SALE - BAL OF SUBDIV LOTS 5-11	266,914.00	0.00	100,996.80
3/31/91	100,996.80	5	186.77		100,996.80	SIMPLE INTEREST	0.00	0.00	100,996.80
4/30/91	100,996.80	30	1,120.65		100,996.80	SIMPLE INTEREST	0.00	0.00	100,996.80
5/31/91	100,996.80	31	1,156.00		100,996.80	SIMPLE INTEREST	0.00	0.00	100,996.80
6/30/91	100,996.80	30	1,120.65		100,996.80	SIMPLE INTEREST	0.00	0.00	100,996.80
7/31/91	100,996.80	31	1,156.00		100,996.80	SIMPLE INTEREST	0.00	0.00	100,996.80
8/31/91	138,353.94	31	1,586.33	37,357.14	138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
9/30/91	138,353.94	30	1,535.16		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
10/31/91	138,353.94	31	1,586.33		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
11/30/91	138,353.94	30	1,535.16		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
12/31/91	138,353.94	31	1,586.33		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
TOTAL 1991		365	24,181.12	37,357.14			266,914.00	3,253.66	138,353.94
CUMULATIVE TOTAL TO DATE			325,753.37	317,924.06			966,760.21	787,190.09	146,163.25

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/31/92	138,353.94	31	1,586.33		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
2/29/92	138,353.94	29	1,483.99		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
3/31/92	138,353.94	31	1,586.33		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
4/30/92	138,353.94	30	1,535.16		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
5/31/92	138,353.94	31	1,586.33		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
6/30/92	138,353.94	30	1,535.16		138,353.94	SIMPLE INTEREST	0.00	0.00	138,353.94
7/31/92	138,353.94	31	1,586.33	18,728.95	157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
8/31/92	157,082.89	31	1,801.07		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
9/30/92	157,082.89	30	1,742.97		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
10/31/92	157,082.89	31	1,801.07		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
11/30/92	157,082.89	30	1,742.97		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
12/31/92	157,082.89	31	1,801.07		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
TOTAL 1992		366	19,788.81	18,728.95			0.00	0.00	157,082.89
CUMULATIVE TOTAL TO DATE			345,542.18	336,653.01			966,760.21	787,190.09	165,972.06

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0 000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/31/93	157,082.89	31	1,801.07		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
2/28/93	157,082.89	28	1,626.78		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
3/31/93	157,082.89	31	1,601.07		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
4/30/93	157,082.89	30	1,742.97		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
5/31/93	157,082.89	31	1,801.07		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
6/30/93	157,082.89	30	1,742.97		157,082.89	SIMPLE INTEREST	0.00	0.00	157,082.89
7/31/93	157,082.89	31	1,801.07	21,206.19	178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
8/31/93	178,289.08	31	2,044.22		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
9/30/93	178,289.08	30	1,978.28		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
10/31/93	178,289.08	31	2,044.22		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
11/30/93	178,289.08	30	1,978.28		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
12/31/93	178,289.08	31	2,044.22		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
TOTAL 1993		365	22,406.23	21,206.19			0.00	0.00	178,289.08
CUMULATIVE TOTAL TO DATE			367,948.41	357,859.20			966,760.21	787,190.09	188,378.29

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000389563

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/31/94	178,289.08	31	2,044.22		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
2/28/94	178,289.08	28	1,846.39		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
3/31/94	178,289.08	31	2,044.22		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
4/30/94	178,289.08	30	1,978.28		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
5/31/94	178,289.08	31	2,044.22		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
6/30/94	178,289.08	30	1,978.28		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
7/31/94	178,289.08	31	2,044.22		178,289.08	SIMPLE INTEREST	0.00	0.00	178,289.08
8/31/94	202,358.11	31	2,320.19	24,069.03	202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
9/30/94	202,358.11	30	2,245.34		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
10/31/94	202,358.11	31	2,320.19		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
11/30/94	202,358.11	30	2,245.34		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
12/31/94	202,358.11	31	2,320.19		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
TOTAL 1994		365	25,431.07	24,069.03			0.00	0.00	202,358.11

CUMULATIVE TOTAL TO DATE

393,379.48

381,928.23

966,760.21

787,190.09

213,809.36

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/31/95	202,358.11	31	2,320.19		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
2/28/95	202,358.11	28	2,095.65		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
3/31/95	202,358.11	31	2,320.19		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
4/30/95	202,358.11	30	2,245.34		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
5/31/95	202,358.11	31	2,320.19		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
6/30/95	202,358.11	30	2,245.34		202,358.11	SIMPLE INTEREST	0.00	0.00	202,358.11
7/31/95	202,358.11	31	2,320.19	27,318.34	229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
8/31/95	229,676.45	31	2,633.41		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
9/30/95	229,676.45	30	2,548.46		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
10/31/95	229,676.45	31	2,633.41		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
11/30/95	229,676.45	30	2,548.46		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
12/31/95	229,676.45	31	2,633.41		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
TOTAL 1995		365	28,864.26	27,318.34			0.00	0.00	229,676.45

CUMULATIVE TOTAL TO DATE

422,243.74

409,246.57

966,760.21

787,190.09

242,673.62

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/31/96	229,676.45	31	2,633.41		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
2/29/96	229,676.45	29	2,463.52		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
3/31/96	229,676.45	31	2,633.41		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
4/30/96	229,676.45	30	2,548.46		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
5/31/96	229,676.45	31	2,633.41		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
6/30/96	229,676.45	30	2,548.46		229,676.45	SIMPLE INTEREST	0.00	0.00	229,676.45
7/31/96	229,676.45	31	2,633.41	31,091.27	260,767.72	SIMPLE INTEREST	0.00	0.00	229,676.45
8/31/96	260,767.72	31	2,989.90		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
9/30/96	260,767.72	30	2,893.45		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
10/31/96	260,767.72	31	2,989.90		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
11/30/96	260,767.72	30	2,893.45		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
12/31/96	260,767.72	31	2,989.90		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
TOTAL 1996		366	32,850.69	31,091.27			0.00	0.00	260,767.72
CUMULATIVE TOTAL TO DATE			455,094.43	440,337.84			966,760.21	787,190.09	275,524.31

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369663

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/31/97	260,767.72	31	2,989.90		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
2/28/97	260,767.72	28	2,700.55		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
3/31/97	260,767.72	31	2,989.90		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
4/30/97	260,767.72	30	2,893.45		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
5/31/97	260,767.72	31	2,989.90		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
6/30/97	260,767.72	30	2,893.45		260,767.72	SIMPLE INTEREST	0.00	0.00	260,767.72
7/31/97	260,767.72	31	2,989.90	35,203.64	295,971.36	SIMPLE INTEREST	0.00	0.00	260,767.72
8/31/97	295,971.36	31	3,393.53		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
9/30/97	295,971.36	30	3,284.07		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
10/31/97	295,971.36	31	3,393.53		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
11/30/97	295,971.36	30	3,284.07		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
12/31/97	295,971.36	31	3,393.53		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
TOTAL 1997		365	37,195.78	35,203.64			0.00	0.00	295,971.36

CUMULATIVE TOTAL TO DATE

492,290.21

475,541.48

966,760.21

787,190.09

312,720.09

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369883

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/31/98	295,971.36	31	3,393.53		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
2/28/98	295,971.36	28	3,065.13		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
3/31/98	295,971.36	31	3,393.53		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
4/30/98	295,971.36	30	3,284.07		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
5/31/98	295,971.36	31	3,393.53		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
6/30/98	295,971.36	30	3,284.07		295,971.36	SIMPLE INTEREST	0.00	0.00	295,971.36
7/31/98	295,971.36	31	3,393.53	39,956.13	335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
8/31/98	335,927.49	31	3,851.66		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
9/30/98	335,927.49	30	3,727.41		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
10/31/98	335,927.49	31	3,851.66		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
11/30/98	335,927.49	30	3,727.41		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
12/31/98	335,927.49	31	3,851.66		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
TOTAL 1998		365	42,217.21	39,956.13			0.00	0.00	335,927.49

CUMULATIVE TOTAL TO DATE 534,507.42 515,497.61 966,760.21 787,190.09 354,937.30

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/31/99	335,927.49	31	3,851.86		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
2/28/99	335,927.49	28	3,478.92		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
3/31/99	335,927.49	31	3,851.66		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
4/30/99	335,927.49	30	3,727.41		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
5/31/99	335,927.49	31	3,851.66		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
6/30/99	335,927.49	30	3,727.41		335,927.49	SIMPLE INTEREST	0.00	0.00	335,927.49
7/31/99	335,927.49	31	3,851.66	45,350.21	381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
8/31/99	381,277.70	31	4,371.64		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
9/30/99	381,277.70	30	4,230.62		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
10/31/99	381,277.70	31	4,371.64		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
11/30/99	381,277.70	30	4,230.62		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
12/31/99	381,277.70	31	4,371.64		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
TOTAL 1999		365	47,916.53	45,350.21			0.00	0.00	381,277.70

CUMULATIVE TOTAL TO DATE

582,423.96

560,847.82

966,760.21

787,190.09

402,853.84

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #1

JOINT VENTURE ACCOUNTING
12/18/84 - 10/1/00

0.000369863

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/31/00	381,277.70	31	4,371.64		381,277.70	SIMPLE INTEREST	0.00	6.00	381,277.70
2/29/00	381,277.70	29	4,089.59		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
3/31/00	381,277.70	31	4,371.64		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
4/30/00	381,277.70	30	4,230.62		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
5/31/00	381,277.70	31	4,371.64		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
6/30/00	381,277.70	30	4,230.62		381,277.70	SIMPLE INTEREST	0.00	0.00	381,277.70
7/31/00	381,277.70	31	4,371.64	51,613.51	432,891.21	SIMPLE INTEREST	0.00	0.00	432,891.21
8/31/00	432,891.21	31	4,963.42		432,891.21	SIMPLE INTEREST	0.00	0.00	432,891.21
9/30/00	432,891.21	30	4,803.31		432,891.21	SIMPLE INTEREST	0.00	0.00	432,891.21
9/30/00	432,891.21	0	0.00		432,891.21	CONDEMNATION AWARD	28,200.00	0.00	404,691.21
9/30/00	404,691.21	0	0.00		404,691.21	DIME EQUITY IN RESIDENCE	126,400.00	0.00	278,291.21
10/1/00	278,291.21	1	102.93	9,869.67	288,160.87	SIMPLE INTEREST	0.00	0.00	288,160.87
TOTAL 2000		275	39,907.04	61,483.17			154,600.00	0.00	288,160.87

CUMULATIVE TOTAL TO DATE 622,330.99

622,330.99

1,121,360.21 787,190.09 288,160.87

**Ex. C - Accounting of Rent Due
to USB from Ms. Alice Dimery**

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

**RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00**

PRIME RATES EFFECTIVE:	DAILY FACTOR	PRIME RATES EFFECTIVE:	DAILY FACTOR
APRIL 1, 1991 - 9.00 %	0.000246575	APRIL 1, 1998 - 8.50%	0.000232877
APRIL 1, 1992 - 6.50%	0.000178082	APRIL 1, 1999 - 7.75%	0.000212329
APRIL 1, 1993 - 6.00%	0.000164384	APRIL 1, 2000 - 9.00%	0.000246575
APRIL 1, 1994 - 6.45%	0.000176712		
APRIL 1, 1995 - 9.00%	0.000246575		
APRIL 1, 1996 - 8.25%	0.000226027		
APRIL 1, 1997 - 8.50%	0.000232877		

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
4/01/91	0.00	0	0.00		0.00	DIMERY - RENTAL CHARGE	0.00	1,878.75	1,878.75
5/01/91	1,878.75	31	14.36		1,878.75	DIMERY - RENTAL CHARGE	0.00	1,878.75	3,757.50
6/01/91	3,757.50	30	27.80		3,757.50	DIMERY - RENTAL CHARGE	0.00	1,878.75	5,636.25
7/01/91	5,636.25	31	43.08		5,636.25	DIMERY - RENTAL CHARGE	0.00	1,878.75	7,515.00
8/01/91	7,515.00	31	57.44		7,515.00	DIMERY - RENTAL CHARGE	0.00	1,878.75	9,393.75
9/01/91	9,393.75	30	69.49		9,393.75	DIMERY - RENTAL CHARGE	0.00	1,878.75	11,272.50
10/01/91	11,272.50	31	85.17		11,272.50	DIMERY - RENTAL CHARGE	0.00	1,878.75	13,151.25
11/01/91	13,151.25	30	97.28		13,151.25	DIMERY - RENTAL CHARGE	0.00	1,878.75	15,030.00
12/01/91	15,030.00	31	114.89		15,030.00	DIMERY - RENTAL CHARGE	0.00	1,878.75	16,908.75
12/31/91	16,908.75	30	125.08		16,908.75	ACCRUED INTEREST	0.00	0.00	16,908.75
TOTAL 1991		275	635.58	0.00			0.00	16,908.75	16,908.75

CUMULATIVE TOTAL TO DATE **635.58** **0.00** **0.00** **16,908.75** **17,544.33**

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR	PRIME RATES EFFECTIVE:	DAILY FACTOR
APRIL 1, 1991 - 9.00 %	0.000246575	APRIL 1, 1998 - 8.50%	0.000232877
APRIL 1, 1992 - 6.50%	0.000178082	APRIL 1, 1999 - 7.75%	0.000212329
APRIL 1, 1993 - 6.00%	0.000164384	APRIL 1, 2000 - 9.00%	0.000246575
APRIL 1, 1994 - 6.45%	0.000176712		
APRIL 1, 1995 - 9.00%	0.000246575		
APRIL 1, 1996 - 8.25%	0.000226027		
APRIL 1, 1997 - 8.50%	0.000232877		

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/01/92	16,908.75	1	4.17		16,908.75	DIMERY - RENTAL CHARGE	0.00	1,878.75	18,787.50
2/01/92	18,787.50	29	134.34		18,787.50	DIMERY - RENTAL CHARGE	0.00	1,878.75	20,666.25
3/01/92	20,666.25	30	152.87		20,666.25	DIMERY - RENTAL CHARGE	0.00	1,878.75	22,545.00
3/31/92	22,545.00	30	166.77	1,093.74	23,638.74	ACCRUED INTEREST	0.00	0.00	23,638.74
4/01/92	23,638.74	1	4.21		23,638.74	DIMERY - RENTAL CHARGE	0.00	1,878.75	25,517.49
5/01/92	25,517.49	31	140.87		25,517.49	DIMERY - RENTAL CHARGE	0.00	1,878.75	27,396.24
6/01/92	27,396.24	30	146.36		27,396.24	DIMERY - RENTAL CHARGE	0.00	1,878.75	29,274.99
7/01/92	29,274.99	31	161.51		29,274.99	DIMERY - RENTAL CHARGE	0.00	1,878.75	31,153.74
8/01/92	31,153.74	31	171.99		31,153.74	DIMERY - RENTAL CHARGE	0.00	1,878.75	33,032.49
9/01/92	33,032.49	30	176.47		33,032.49	DIMERY - RENTAL CHARGE	0.00	1,878.75	34,911.24
10/01/92	34,911.24	31	192.73		34,911.24	DIMERY - RENTAL CHARGE	0.00	1,878.75	36,789.99
11/01/92	36,789.99	30	196.55		36,789.99	DIMERY - RENTAL CHARGE	0.00	1,878.75	38,668.74
12/01/92	38,668.74	31	213.47		38,668.74	DIMERY - RENTAL CHARGE	0.00	1,878.75	40,547.49
12/31/92	40,547.49	30	216.62		40,547.49	ACCRUED INTEREST	0.00	0.00	40,547.49
TOTAL 1992		366	2,079.05	1,093.74			0.00	22,545.00	40,547.49

CUMULATIVE TOTAL TO DATE 2,714.63 1,093.74 0.00 39,453.75 42,168.38

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00

DAILY		DAILY	
PRIME RATES EFFECTIVE:	FACTOR	PRIME RATES EFFECTIVE:	FACTOR
APRIL 1, 1991 - 9.00 %	0.000246575	APRIL 1, 1998 - 8.50%	0.000232877
APRIL 1, 1992 - 6.50%	0.000178082	APRIL 1, 1999 - 7.75%	0.000212329
APRIL 1, 1993 - 6.00%	0.000164384	APRIL 1, 2000 - 9.00%	0.000246575
APRIL 1, 1994 - 6.45%	0.000176712		
APRIL 1, 1995 - 9.00%	0.000246575		
APRIL 1, 1996 - 8.25%	0.000226027		
APRIL 1, 1997 - 8.50%	0.000232877		

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/01/93	40,547.49	1	7.22		40,547.49	DIMERY - RENTAL CHARGE	0.00	1,878.75	42,426.24
2/01/93	42,426.24	28	211.55		42,426.24	DIMERY - RENTAL CHARGE	0.00	1,878.75	44,304.99
3/01/93	44,304.99	30	236.70		44,304.99	DIMERY - RENTAL CHARGE	0.00	1,878.75	46,183.74
3/31/93	46,183.74	30	246.74		46,183.74	ACCRUED INTEREST	0.00	0.00	46,183.74
4/01/93	48,506.84	1	7.97	2,323.10	48,506.84	DIMERY - RENTAL CHARGE	0.00	1,878.75	50,385.59
5/01/93	50,385.59	31	256.76		50,385.59	DIMERY - RENTAL CHARGE	0.00	1,878.75	52,264.34
6/01/93	52,264.34	30	257.74		52,264.34	DIMERY - RENTAL CHARGE	0.00	1,878.75	54,143.09
7/01/93	54,143.09	31	275.91		54,143.09	DIMERY - RENTAL CHARGE	0.00	1,878.75	56,021.84
8/01/93	56,021.84	31	285.48		56,021.84	DIMERY - RENTAL CHARGE	0.00	1,878.75	57,900.59
9/01/93	57,900.59	30	285.54		57,900.59	DIMERY - RENTAL CHARGE	0.00	1,878.75	59,779.34
10/01/93	59,779.34	31	304.63		59,779.34	DIMERY - RENTAL CHARGE	0.00	1,878.75	61,658.09
11/01/93	61,658.09	30	304.07		61,658.09	DIMERY - RENTAL CHARGE	0.00	1,878.75	63,536.84
12/01/93	63,536.84	31	323.78		63,536.84	DIMERY - RENTAL CHARGE	0.00	1,878.75	65,415.59
12/31/93	65,415.59	30	322.60		65,415.59	ACCRUED INTEREST	0.00	0.00	65,415.59
TOTAL 1993		365	3,326.67	2,323.10			0.00	22,545.00	65,415.59
CUMULATIVE TOTAL TO DATE			6,041.31	3,416.84			0.00	61,998.75	68,040.06

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR	PRIME RATES EFFECTIVE:	DAILY FACTOR
APRIL 1, 1991 - 9.00 %	0.000246575	APRIL 1, 1998 - 8.50%	0.000232877
APRIL 1, 1992 - 6.50%	0.000178082	APRIL 1, 1999 - 7.75%	0.000212329
APRIL 1, 1993 - 6.00%	0.000164384	APRIL 1, 2000 - 9.00%	0.000246575
APRIL 1, 1994 - 6.45%	0.000178712		
APRIL 1, 1995 - 9.00%	0.000246575		
APRIL 1, 1996 - 8.25%	0.000226027		
APRIL 1, 1997 - 8.50%	0.000232877		

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/01/94	65,415.59	1	10.75		65,415.59	DIMERY - RENTAL CHARGE	0.00	1,878.75	67,294.34
2/01/94	67,294.34	28	309.74		67,294.34	DIMERY - RENTAL CHARGE	0.00	1,878.75	69,173.09
3/01/94	69,173.09	30	341.13		69,173.09	DIMERY - RENTAL CHARGE	0.00	1,878.75	71,051.84
3/31/94	71,051.84	30	350.39	3,636.48	74,688.32	ACCRUED INTEREST	0.00	0.00	74,688.32
4/01/94	74,688.32	1	13.20		74,688.32	DIMERY - RENTAL CHARGE	0.00	1,878.75	76,567.07
5/01/94	76,567.07	31	419.44		76,567.07	DIMERY - RENTAL CHARGE	0.00	1,878.75	78,445.82
6/01/94	78,445.82	30	415.87		78,445.82	DIMERY - RENTAL CHARGE	0.00	1,878.75	80,324.57
7/01/94	80,324.57	31	440.02		80,324.57	DIMERY - RENTAL CHARGE	0.00	1,878.75	82,203.32
3/01/94	82,203.32	31	450.32		82,203.32	DIMERY - RENTAL CHARGE	0.00	1,878.75	84,082.07
9/01/94	84,082.07	30	445.75		84,082.07	DIMERY - RENTAL CHARGE	0.00	1,878.75	85,960.82
10/01/94	85,960.82	31	470.90		85,960.82	DIMERY - RENTAL CHARGE	0.00	1,878.75	87,839.57
11/01/94	87,839.57	30	465.67		87,839.57	DIMERY - RENTAL CHARGE	0.00	1,878.75	89,718.32
12/01/94	89,718.32	31	491.48		89,718.32	DIMERY - RENTAL CHARGE	0.00	1,878.75	91,597.07
12/31/94	91,597.07	30	485.59		91,597.07	ACCRUED INTEREST	0.00	0.00	91,597.07
TOTAL 1994		365	5,110.26	3,636.48			0.00	22,545.00	91,597.07
CUMULATIVE TOTAL TO DATE			11,151.57	7,053.32			0.00	84,543.75	95,695.32

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR	PRIME RATES EFFECTIVE:	DAILY FACTOR
APRIL 1, 1991 - 9.00 %	0.000246575	APRIL 1, 1998 - 8.50%	0.000232877
APRIL 1, 1992 - 6.50%	0.000178082	APRIL 1, 1999 - 7.75%	0.000212329
APRIL 1, 1993 - 6.00%	0.000164384	APRIL 1, 2000 - 9.00%	0.000246575
APRIL 1, 1994 - 6.45%	0.000176712		
APRIL 1, 1995 - 9.00%	0.000246575		
APRIL 1, 1996 - 8.25%	0.000226027		
APRIL 1, 1997 - 8.50%	0.000232877		

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/01/95	91,597.07	1	16.19		91,597.07	DIMERY - RENTAL CHARGE	0.00	1,878.75	93,475.82
2/01/95	93,475.82	28	462.51		93,475.82	DIMERY - RENTAL CHARGE	0.00	1,878.75	95,354.57
3/01/95	95,354.57	30	505.51		95,354.57	DIMERY - RENTAL CHARGE	0.00	1,878.75	97,233.32
3/31/95	97,233.32	30	515.47	5,597.92	102,831.25	ACCRUED INTEREST	0.00	0.00	102,831.25
4/01/95	102,831.25	1	25.38		102,831.25	DIMERY - RENTAL CHARGE	0.00	1,878.75	104,710.00
5/01/95	104,710.00	31	800.39		104,710.00	DIMERY - RENTAL CHARGE	0.00	1,878.75	106,588.75
6/01/95	106,588.75	30	788.48		106,588.75	DIMERY - RENTAL CHARGE	0.00	1,878.75	108,467.50
7/01/95	108,467.50	31	829.11		108,467.50	DIMERY - RENTAL CHARGE	0.00	1,878.75	110,346.25
8/01/95	110,346.25	31	843.47		110,346.25	DIMERY - RENTAL CHARGE	0.00	1,878.75	112,225.00
9/01/95	112,225.00	30	830.16		112,225.00	DIMERY - RENTAL CHARGE	0.00	1,878.75	114,103.75
10/01/95	114,103.75	31	872.19		114,103.75	DIMERY - RENTAL CHARGE	0.00	1,878.75	115,982.50
11/01/95	115,982.50	30	857.95		115,982.50	DIMERY - RENTAL CHARGE	0.00	1,878.75	117,861.25
12/01/95	117,861.25	31	900.91		117,861.25	DIMERY - RENTAL CHARGE	0.00	1,878.75	119,740.00
12/31/95	119,740.00	30	885.75		119,740.00	ACCRUED INTEREST	0.00	0.00	119,740.00
TOTAL 1995		365	9,133.42	5,597.92			0.00	22,545.00	119,740.00

CUMULATIVE TOTAL TO DATE 20,284.99 12,651.25 0.00 107,088.75 127,373.74

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR	PRIME RATES EFFECTIVE:	DAILY FACTOR
APRIL 1, 1991 - 9.00 %	0.000246575	APRIL 1, 1998 - 8.50%	0.000232877
APRIL 1, 1992 - 6.50%	0.000178082	APRIL 1, 1999 - 7.75%	0.000212329
APRIL 1, 1993 - 6.00%	0.000164384	APRIL 1, 2000 - 9.00%	0.000246575
APRIL 1, 1994 - 6.45%	0.000178712		
APRIL 1, 1995 - 9.00%	0.000246575		
APRIL 1, 1996 - 8.25%	0.000226027		
APRIL 1, 1997 - 8.50%	0.000232877		

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/01/96	119,740.00	1	29.52		119,740.00	DIMERY - RENTAL CHARGE	0.00	1,878.75	121,618.75
2/01/96	121,618.75	29	869.86		121,618.75	DIMERY - RENTAL CHARGE	0.00	1,878.75	123,497.50
3/01/96	123,497.50	30	913.54		123,497.50	DIMERY - RENTAL CHARGE	0.00	1,878.75	125,376.25
3/31/96	125,376.25	30	927.44	10,373.91	135,750.15	ACCRUED INTEREST	0.00	0.00	135,750.15
4/01/96	135,750.15	1	30.68		135,750.15	DIMERY - RENTAL CHARGE	0.00	1,878.75	137,628.90
5/01/96	137,628.90	31	964.34		137,628.90	DIMERY - RENTAL CHARGE	0.00	1,878.75	139,507.65
6/01/96	139,507.65	30	945.98		139,507.65	DIMERY - RENTAL CHARGE	0.00	1,878.75	141,386.40
7/01/96	141,386.40	31	990.67		141,386.40	DIMERY - RENTAL CHARGE	0.00	1,878.75	143,265.15
8/01/96	143,265.15	31	1,003.84		143,265.15	DIMERY - RENTAL CHARGE	0.00	1,878.75	145,143.90
9/01/96	145,143.90	30	984.19		145,143.90	DIMERY - RENTAL CHARGE	0.00	1,878.75	147,022.65
10/01/96	147,022.65	31	1,030.17		147,022.65	DIMERY - RENTAL CHARGE	0.00	1,878.75	148,901.40
11/01/96	148,901.40	30	1,009.67		148,901.40	DIMERY - RENTAL CHARGE	0.00	1,878.75	150,780.15
12/01/96	150,780.15	31	1,056.49		150,780.15	DIMERY - RENTAL CHARGE	0.00	1,878.75	152,658.90
12/31/96	152,658.90	30	1,035.15		152,658.90	ACCRUED INTEREST	0.00	0.00	152,658.90
TOTAL 1996		366	11,791.36	10,373.91			0.00	22,545.00	152,658.90

CUMULATIVE TOTAL TO DATE 32,076.35 23,025.15 0.00 129,633.75 161,710.10

App. 45

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR	PRIME RATES EFFECTIVE:	DAILY FACTOR
APRIL 1, 1991 - 9.00 %	0.000246575	APRIL 1, 1998 - 8.50%	0.000232877
APRIL 1, 1992 - 6.50%	0.000179082	APRIL 1, 1999 - 7.75%	0.000212329
APRIL 1, 1993 - 6.00%	0.000164384	APRIL 1, 2000 - 9.00%	0.000246575
APRIL 1, 1994 - 6.45%	0.000176712		
APRIL 1, 1995 - 9.00%	0.000246575		
APRIL 1, 1996 - 8.25%	0.000226027		
APRIL 1, 1997 - 8.50%	0.000232877		

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/01/97	152,658.90	1	34.51		152,658.90	DIMERY - RENTAL CHARGE	0.00	1,878.75	154,537.65
2/01/97	154,537.65	28	978.03		154,537.65	DIMERY - RENTAL CHARGE	0.00	1,878.75	156,416.40
3/01/97	156,416.40	30	1,060.63		156,416.40	DIMERY - RENTAL CHARGE	0.00	1,878.75	158,295.15
3/31/97	158,295.15	30	1,073.37	12,197.74	170,492.89	ACCRUED INTEREST	0.00	0.00	170,492.89
4/01/97	170,492.89	1	39.70		170,492.89	DIMERY - RENTAL CHARGE	0.00	1,878.75	172,371.64
5/01/97	172,371.64	31	1,244.38		172,371.64	DIMERY - RENTAL CHARGE	0.00	1,878.75	174,250.39
6/01/97	174,250.39	30	1,217.37		174,250.39	DIMERY - RENTAL CHARGE	0.00	1,878.75	176,129.14
7/01/97	176,129.14	31	1,271.51		176,129.14	DIMERY - RENTAL CHARGE	0.00	1,878.75	178,007.89
8/01/97	178,007.89	31	1,285.07		178,007.89	DIMERY - RENTAL CHARGE	0.00	1,878.75	179,886.64
9/01/97	179,886.64	30	1,256.74		179,886.64	DIMERY - RENTAL CHARGE	0.00	1,878.75	181,765.39
10/01/97	181,765.39	31	1,312.20		181,765.39	DIMERY - RENTAL CHARGE	0.00	1,878.75	183,644.14
11/01/97	183,644.14	30	1,282.99		183,644.14	DIMERY - RENTAL CHARGE	0.00	1,878.75	185,522.89
12/01/97	185,522.89	31	1,339.32		185,522.89	DIMERY - RENTAL CHARGE	0.00	1,878.75	187,401.64
12/31/97	187,401.64	30	1,309.24		187,401.64	ACCRUED INTEREST	0.00	0.00	187,401.64
TOTAL 1997		365	14,705.07	12,197.74			0.00	22,545.00	198,950.17

CUMULATIVE TOTAL TO DATE

46,781.42

35,222.89

0.00

152,178.75

198,950.17

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR	PRIME RATES EFFECTIVE:	DAILY FACTOR
APRIL 1, 1991 - 9.00 %	0.000246575	APRIL 1, 1998 - 8.50%	0.000232877
APRIL 1, 1992 - 6.50%	0.000178082	APRIL 1, 1999 - 7.75%	0.000212329
APRIL 1, 1993 - 6.00%	0.000164384	APRIL 1, 2000 - 9.00%	0.000246575
APRIL 1, 1994 - 6.45%	0.000176712		
APRIL 1, 1995 - 9.00%	0.000246575		
APRIL 1, 1996 - 8.25%	0.000226027		
APRIL 1, 1997 - 8.50%	0.000232877		

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/01/98	187,401.64	1	43.64		187,401.64	DIMERY - RENTAL CHARGE	0.00	1,878.75	189,280.39
2/01/98	189,280.39	28	1,234.21		189,280.39	DIMERY - RENTAL CHARGE	0.00	1,878.75	191,159.14
3/01/98	191,159.14	30	1,335.50		191,159.14	DIMERY - RENTAL CHARGE	0.00	1,878.75	193,037.89
3/31/98	193,037.89	30	1,348.62	15,520.50	208,558.39	ACCRUED INTEREST	0.00	0.00	208,558.39
4/01/98	208,558.39	1	48.57		208,558.39	DIMERY - RENTAL CHARGE	0.00	1,878.75	210,437.14
5/01/98	210,437.14	31	1,519.18		210,437.14	DIMERY - RENTAL CHARGE	0.00	1,878.75	212,315.89
6/01/98	212,315.89	30	1,483.30		212,315.89	DIMERY - RENTAL CHARGE	0.00	1,878.75	214,194.64
7/01/98	214,194.64	31	1,546.31		214,194.64	DIMERY - RENTAL CHARGE	0.00	1,878.75	216,073.39
8/01/98	216,073.39	31	1,559.87		216,073.39	DIMERY - RENTAL CHARGE	0.00	1,878.75	217,952.14
9/01/98	217,952.14	30	1,522.68		217,952.14	DIMERY - RENTAL CHARGE	0.00	1,878.75	219,830.89
10/01/98	219,830.89	31	1,587.00		219,830.89	DIMERY - RENTAL CHARGE	0.00	1,878.75	221,709.64
11/01/98	221,709.64	30	1,548.93		221,709.64	DIMERY - RENTAL CHARGE	0.00	1,878.75	223,588.39
12/01/98	223,588.39	31	1,614.12		223,588.39	DIMERY - RENTAL CHARGE	0.00	1,878.75	225,467.14
12/31/98	225,467.14	30	1,575.18		225,467.14	ACCRUED INTEREST	0.00	0.00	225,467.14
TOTAL 1998		365	17,967.12	15,520.50			0.00	22,545.00	225,467.14

CUMULATIVE TOTAL TO DATE	64,748.54	50,743.39	0.00	174,723.75	239,472.29
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ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR	PRIME RATES EFFECTIVE:	DAILY FACTOR
APRIL 1, 1991 - 9.00 %	0.000246575	APRIL 1, 1998 - 8.50%	0.000232877
APRIL 1, 1992 - 8.50%	0.000178082	APRIL 1, 1999 - 7.75%	0.000212329
APRIL 1, 1993 - 6.00%	0.000164384	APRIL 1, 2000 - 9.00%	0.000246575
APRIL 1, 1994 - 6.45%	0.000176712		
APRIL 1, 1995 - 9.00%	0.000246575		
APRIL 1, 1996 - 8.25%	0.000226027		
APRIL 1, 1997 - 8.50%	0.000232877		

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/01/99	225,467.14	1	52.51		225,467.14	DIMERY - RENTAL CHARGE	0.00	1,878.75	227,345.89
2/01/99	227,345.89	28	1,462.42		227,345.89	DIMERY - RENTAL CHARGE	0.00	1,878.75	229,224.64
3/01/99	229,224.64	30	1,601.43		229,224.64	DIMERY - RENTAL CHARGE	0.00	1,878.75	231,103.39
3/31/99	231,103.39	30	1,614.56	18,756.07	249,859.46	ACCRUED INTEREST	0.00	0.00	249,859.46
4/01/99	249,859.46	1	53.05		249,859.46	DIMERY - RENTAL CHARGE	0.00	1,878.75	251,738.21
5/01/99	251,738.21	31	1,656.99		251,738.21	DIMERY - RENTAL CHARGE	0.00	1,878.75	253,616.96
6/01/99	253,616.96	30	1,615.51		253,616.96	DIMERY - RENTAL CHARGE	0.00	1,878.75	255,495.71
7/01/99	255,495.71	31	1,681.72		255,495.71	DIMERY - RENTAL CHARGE	0.00	1,878.75	257,374.46
8/01/99	257,374.46	31	1,694.09		257,374.46	DIMERY - RENTAL CHARGE	0.00	1,878.75	259,253.21
9/01/99	259,253.21	30	1,651.41		259,253.21	DIMERY - RENTAL CHARGE	0.00	1,878.75	261,131.96
10/01/99	261,131.96	31	1,718.82		261,131.96	DIMERY - RENTAL CHARGE	0.00	1,878.75	263,010.71
11/01/99	263,010.71	30	1,675.34		263,010.71	DIMERY - RENTAL CHARGE	0.00	1,878.75	264,889.46
12/01/99	264,889.46	31	1,743.55		264,889.46	DIMERY - RENTAL CHARGE	0.00	1,878.75	266,768.21
12/31/99	266,768.21	30	1,699.26		266,768.21	ACCRUED INTEREST	0.00	0.00	266,768.21
TOTAL 1999		365	19,940.67	18,756.07			0.00	22,545.00	266,768.21

CUMULATIVE TOTAL TO DATE 64,689.21 69,499.46 0.00 197,268.75 281,957.96

**Ex. E - Accounting of Taxes Paid
by USB on Lakefront Property**

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #2

**RENT DUE TO USB FROM MS. ALICE DIMERY
4/1/91 - 10/1/00**

PRIME RATES EFFECTIVE:		DAILY FACTOR	PRIME RATES EFFECTIVE:		DAILY FACTOR
APRIL 1, 1991 - 9.00 %		0.000246575	APRIL 1, 1998 - 8.50%		0.000232877
APRIL 1, 1992 - 6.50%		0.000178082	APRIL 1, 1999 - 7.75%		0.000212329
APRIL 1, 1993 - 6.00%		0.000164384	APRIL 1, 2000 - 9.00%		0.000246575
APRIL 1, 1994 - 6.45%		0.000176712			
APRIL 1, 1995 - 9.00%		0.000246575			
APRIL 1, 1996 - 8.25%		0.000226027			
APRIL 1, 1997 - 8.50%		0.000232877			

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/01/00	266,768.21	1	56.64		266,768.21	DIMERY - RENTAL CHARGE	0.00	1,878.75	268,646.96
2/01/00	268,646.96	28	1,597.16		268,646.96	DIMERY - RENTAL CHARGE	0.00	1,878.75	270,525.71
3/01/00	270,525.71	30	1,723.21		270,525.71	DIMERY - RENTAL CHARGE	0.00	1,878.75	272,404.46
3/31/00	272,404.46	30	1,735.18	20,301.95	292,708.41	ACCRUED INTEREST	0.00	0.00	292,708.41
4/01/00	292,706.41	1	72.17		292,708.41	DIMERY - RENTAL CHARGE	0.00	1,878.75	294,585.16
5/01/00	294,585.16	31	2,251.76		294,585.16	DIMERY - RENTAL CHARGE	0.00	1,878.75	296,463.91
6/01/00	296,463.91	30	2,193.02		296,463.91	DIMERY - RENTAL CHARGE	0.00	1,878.75	298,342.66
7/01/00	298,342.66	31	2,280.48		298,342.66	DIMERY - RENTAL CHARGE	0.00	1,878.75	300,221.41
8/01/00	300,221.41	31	2,294.84		300,221.41	DIMERY - RENTAL CHARGE	0.00	1,878.75	302,100.16
9/01/00	302,100.16	30	2,234.71		302,100.16	DIMERY - RENTAL CHARGE	0.00	1,878.75	303,978.91
10/01/00	303,978.91	31	2,323.56		303,978.91	DIMERY - RENTAL CHARGE	0.00	1,878.75	305,857.66
10/01/00	305,857.66	0	0.00	13,650.56	319,508.22	ACCRUED INTEREST	0.00	0.00	319,508.22
TOTAL 2000		274	18,762.75	33,952.51			0.00	18,787.50	319,508.22

CUMULATIVE TOTAL TO DATE 103,451.97 103,451.97 0.00 216,056.25 319,508.22

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #3

TAXES PAID BY USB ON LAKEFRONT PROPERTY
1991 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR
JANUARY 1, 1994 - 6.00 %	0.000164384
JANUARY 1, 1995 - 8.50 %	0.000232677
JANUARY 1, 1996 - 3 %	0.000232677
JANUARY 1, 1997 - 5 %	0.000226027
JANUARY 1, 1998 - 8.50 %	0.000232677
JANUARY 1, 1999 - 7.75 %	0.000212329
JANUARY 1, 2000 - 8.50 %	0.000232677

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
6/20/94	0.00	0	0.00		0.00	1991 TOWN TAX	0.00	580.09	580.09
6/20/94	580.09	0	0.00		580.09	1992 TOWN TAX	0.00	608.40	1,188.49
6/20/94	1,188.49	0	0.00		1,188.49	1993 TOWN TAX	0.00	504.72	1,693.21
6/20/94	1,693.21	0	0.00		1,693.21	1994 TOWN TAX	0.00	426.94	2,120.15
9/9/94	2,120.15	81	28.23		2,120.15	1994 SCHOOL TAX	0.00	256.91	2,377.06
12/31/94	2,377.06	113	44.15	72.38	2,449.44	ACCURED INTEREST	0.00	0.00	2,449.44
TOTAL 1994		194	72.38	72.38			0.00	2,377.06	2,449.44
CUMULATIVE TOTAL TO DATE			72.38	72.38			0.00	2,377.06	2,449.44

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #3

TAXES PAID BY USB ON LAKEFRONT PROPERTY
1991 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR
JANUARY 1, 1994 - 6.00 %	0.000164384
JANUARY 1, 1995 - 8.50 %	0.000232877
JANUARY 1, 1996 - 8.50 %	0.000232877
JANUARY 1, 1997 - 8.25 %	0.000226027
JANUARY 1, 1998 - 8.50 %	0.000232877
JANUARY 1, 1999 - 7.75 %	0.000212329
JANUARY 1, 2000 - 8.50 %	0.000232877

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/10/95	2,449.44	10	5.70		2,449.44	1995 TOWN TAX	0.00	122.76	2,572.20
2/11/95	2,572.20	31	18.57		2,572.20	1995 SUPPLEMENTAL	0.00	7.81	2,580.01
9/14/95	2,580.01	216	129.78		2,580.01	1995 SCHOOL TAX	0.00	269.42	2,849.43
12/31/95	2,849.43	108	71.67	225.72	3,075.15	ACCRUED INTEREST	0.00	0.00	3,075.15
TOTAL 1995		365	225.72	225.72			0.00	399.99	3,075.15
CUMULATIVE TOTAL TO DATE									
			298.10	298.10			0.00	2,777.05	3,075.15

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #3

TAXES PAID BY USB ON LAKEFRONT PROPERTY
1991 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR
JANUARY 1, 1994 - 8.00 %	0.000164384
JANUARY 1, 1995 - 8.50 %	0.000232877
JANUARY 1, 1996 - 8.50 %	0.000232877
JANUARY 1, 1997 - 8.25 %	0.000226027
JANUARY 1, 1998 - 8.50 %	0.000232877
JANUARY 1, 1999 - 7.75 %	0.000212329
JANUARY 1, 2000 - 8.50 %	0.000232877

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/5/96	3,075.15	5	3.58		3,075.15	1996 TOWN TAX	0.00	133.12	3,208.27
9/5/96	3,208.27	244	182.30		3,208.27	1996 SCHOOL TAX	0.00	385.40	3,573.67
12/31/96	3,573.67	117	97.37	283.25	3,856.92	ACCRUED INTEREST	0.00	0.00	3,856.92
TOTAL 1996		366	283.25	283.25			0.00	498.52	3,856.92
CUMULATIVE TOTAL TO DATE			581.35	581.35			0.00	3,275.57	3,856.92

**Decision and Order of the Hon. S. Barrett Hickman
dated May 19, 2000**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM**

----- x
ALICE LARAINÉ DIMERY,

Plaintiff,

– against –

ULSTER SAVINGS BANK

Defendant.

**DECISION & ORDER
INDEX NO. 230-93**

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HICKMAN, J.

BACKGROUND

Alice Dimery ("Dimery") purchased property on South Lake Boulevard, Town of Carmel, Putnam County, New York, from Hilda Levine on October 30, 1982 as shown by Deed recorded in Liber 786, of deeds at page 474, Exhibit 28. This purchase was apparently not financed. The property purchased consisted of a small lakefront parcel on Lake Mohapac and a parcel across the road from the Lake containing a large residence. These properties will be referred to hereinafter as the "Lake" property.

Shortly thereafter, it appears that Dimery, who was knowledgeable in the real estate business, having experience as a real estate broker and/or agent, located property on Union Valley Road in the Town of Carmel which she believed could be subdivided and sold at a profit. This property is referred to herein as the "Valley" property.

On December 14, 1982, Ulster Savings Bank ("Ulster") loaned money to Dimery as follows:

Two mortgages on her two Lake properties in the amounts of \$106,800.00 and \$40,800.00 respectively (Exhibits B-1 and B-2).

Two mortgages on the purchase of the Valley property in the amounts of \$27,300.00 and \$106,300.00 respectively (Exhibits B-3 and B-4).

The total advanced by Ulster was \$281,200.00. Each note accompanying the mortgages and signed by Dimery provided for specific monthly payments of principal and interest commencing February 1, 1983. For some unexplained reason it appears, as noted below, that Dimery never made a single payment on any of the four mortgages for over two years. Exhibit A, the agreement entered into between the parties on the 1st day of March, 1985 when the mortgages were heavily in default, indicates that as of that date, the original principal of \$281,200.00 was still due Ulster as well as \$70,787.72 in accrued interest.

In addition, Exhibit 17 indicates that Dimery's check for \$9,208.40 given at the Valley property closing on December 14, 1982 was not honored although as noted by Exhibit BBB, this check was eventually covered in July, 1983, more than six months after the closing. Exhibit 18 refers to Dimery check #111 dated September 13, 1983 for \$20,649.20 and check #112 dated September 15, 1983 for \$14,240.14. These checks, which were not honored by her bank because of insufficient funds, appear to relate to interest on the four mortgages referred to above. On October 6, 1983 Ulster returned the checks noting there was no money in her account to cover these checks. Since these checks were not honored, the record reflects no

payment by Dimery of either principal or interest from December 14, 1982 to March 1, 1985.

Exhibits NN and OO show that Ulster commenced foreclosure proceedings on or about June 20, 1983, which, again for some unexplained reason, were not completed until December 7, 1984 (Exhibits F-1 and F-2). Through what appears to have been a clerical error, the larger and unimproved Valley parcel was omitted from the original mortgage and therefore from the foreclosure proceeding. Only the small parcel, part of the old railroad bed and relatively nominal in value, was mortgaged and foreclosed. Thereafter, Dimery and Ulster reached an agreement dated March 1, 1985, which allowed her to remain in the Lake premises (Exhibit A). In that agreement, "1. Dimery confirms and acknowledges the ownership by ULSTER of the properties set forth in Schedule A hereto attached and made a part hereof and agrees to this day to execute a Bargain and Sale Deed with Covenants against Grantors Act running from DIMERY to ULSTER as evidence of her confirming and acknowledgment of the ownership of ULSTER free and clear of any claims, defenses, reservations or obligations."

On March 1, 1985 when the agreement was executed, Dimery also executed a Bargain and Sale Deed with Covenant pursuant to the agreement conveying the Lake property and the Valley property to Ulster. This deed was recorded in Liber 882 of deeds at page 065 (see Exhibit 28). This deed included the larger and improved Valley parcel.

The agreement was not prepared by the St. John law firm which represented Ulster as counsel. Howard C. St. John ("St. John") was at that time President and CEO of

Ulster and senior partner in the St. John law firm. The agreement was prepared by Robert A. Ronder of a separate law practice which did work for Ulster. Dimery apparently chose not to be represented by counsel, however, there is absolutely no indication that she would not have been permitted to have counsel had she chosen to be so represented.

The basic agreement confirmed Ulster's ownership of the four parcels and fixed Dimery's then unpaid obligations in the sum of \$364,926.14 with interest to accrue at the rate of \$13.5% [sic] per annum, compounded monthly. It envisioned an arrangement whereby Dimery would continue to process a subdivision application for the Valley property before the Town of Carmel and Ulster would advance all moneys necessary to obtain approval, pay taxes and all other expenses. Sums advanced were to be added to principal and accrue interest at 13.5% compounded monthly. All rents and income were to be paid to Ulster. Dimery was allowed to remain in possession of the Lake property and pay a monthly rental of \$1,878.75 plus real estate taxes, insurance and other ordinary expenses. Ulster reserved the right to terminate the agreement on 30 days notice at which time Dimery would be required to vacate the premises.

Dimery was authorized to pursue the subdivision approval for the Valley property which was already underway and which Dimery apparently represented was imminent. Final decisions were solely and exclusively to be made by Ulster. Any profit was to be divided $\frac{2}{3}$ to Ulster and $\frac{1}{3}$ to Dimery after repayment to Ulster of all moneys advanced with accrued interest.

St. John testified at the trial that Dimery believed the subdivision, which was already in progress, would be approved at a Planning Board meeting on June 18, 1985. The parties, at St. John's urging, agreed to extend the agreement and approval date to August 1, 1985 to allow a little extra time. To say this time frame was overly optimistic is a vast understatement. In fact, no final approval for the entire subdivision was obtained until July, 1988 when Map 225B was filed although Section I had previously been approved a year earlier. The first sale of a lot took place in September 1989 when Lot 3 was sold after the road and other improvements were complete.

Although the August 1, 1985 termination date passed, the parties continued to act in furtherance of their agreement. In all fairness to Dimery, it appears that she devoted great effort and countless hours in furtherance of the approvals from the various town agencies. Dimery's initial approach had been for approval of a cluster development, which seemed to make sense for this relatively small subdivision. Unfortunately, she failed to realize that this approval under the applicable regulations would require central water and sewer. It was then obvious that the small number of units could never support such an expensive infrastructure. Accordingly, she amended the plan to request a normal single lot, two section subdivision consisting of 11 lots, each lot to be serviced by an individual well and septic system.

The property being subdivided was a long relatively narrow parcel as shown on Exhibit C, survey dated January, 1983. As a result, unlike most subdivisions, it was impossible to locate a road which would entirely service houses on both sides of the road. This factor substantially

increased the per lot road cost thereby decreasing the potential profit.

The subdivision map, Exhibit D, completed December 9, 1986, indicated other difficulties in that some lots required fill in the septic areas and the location map (vicinity plan) indicates that there was a small lake in the vicinity of the subdivision. The property also contained wetlands and there were drainage problems. During the development of the property, there were two wetlands violations recorded, resulting in a \$2,000.00 fine against Dimery which was paid by Ulster (Exhibit 34).

Submitted to the Court are two voluminous Exhibits, 26 and 27, which contain records of the subdivision application and proceedings as well as applications to the Zoning Board of Appeals and to the Environmental Conservation Commission. A review of these extensive documents demonstrates why going through the approval process took years rather than five months. It also leads to the conclusion that this was not an easy parcel to subdivide and market. Dimery's efforts were obviously extensive and effective in finally obtaining the required approvals. However, the aforementioned factors seriously affected the ultimate ability to obtain timely approvals and to rapidly and successfully market the property at a maximum profit.

From the date of the agreement on March 1, 1985 through final approval in July, 1988 and beyond as the road was constructed, there was never any formal modification, amendment or extension of the underlying agreement. Dimery continued her efforts to obtain approvals and market the property and Ulster continued to advance moneys. The parties were in regular contact and worked

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #3

TAXES PAID BY USB ON LAKEFRONT PROPERTY
1991 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR
JANUARY 1, 1994 - 6.00 %	0.000164384
JANUARY 1, 1995 - 8.50 %	0.000232877
JANUARY 1, 1996 - 8.50 %	0.000232877
JANUARY 1, 1997 - 8.25 %	0.000226027
JANUARY 1, 1998 - 8.50 %	0.000232877
JANUARY 1, 1999 - 7.75 %	0.000212329
JANUARY 1, 2000 - 8.50 %	0.000232877

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/15/97	3,856.92	15	13.08		3,856.92	1997 TOWN TAX	0.00	167.61	4,024.53
9/8/97	4,024.53	236	214.68		4,024.53	1997 SCHOOL TAX	0.00	362.55	4,387.08
12/31/97	4,387.08	114	113.04	340.80	4,727.88	ACCRUED INTEREST	0.00	0.00	4,727.88
TOTAL 1997		365	340.80	340.80			0.00	530.16	4,727.88
CUMULATIVE TOTAL TO DATE			922.15	922.15			0.00	3,805.73	4,727.88

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #3

TAXES PAID BY USB ON LAKEFRONT PROPERTY
1991 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR
JANUARY 1, 1994 - 6.00 %	0.000164384
JANUARY 1, 1995 - 8.50 %	0.000232877
JANUARY 1, 1996 - 8.50 %	0.000232877
JANUARY 1, 1997 - 8.25 %	0.000226027
JANUARY 1, 1998 - 8.50 %	0.000232877
JANUARY 1, 1999 - 7.75 %	0.000212323
JANUARY 1, 2000 - 8.50 %	0.000232877

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/20/98	4,727.88	20	22.02		4,727.88	1998 TOWN TAX	0.00	166.00	4,896.88
9/10/98	4,896.88	233	265.71		4,896.88	1998 SCHOOL TAX	0.00	366.22	5,263.10
12/31/98	5,263.10	112	137.27	425.00	5,688.10	ACCRUED INTEREST	0.00	0.00	5,688.10
TOTAL 1998		365	425.00	425.00			0.00	535.22	5,688.10

CUMULATIVE TOTAL TO DATE 1,347.15 1,347.15 0.00 4,340.95 5,688.10

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #3

TAXES PAID BY USB ON LAKEFRONT PROPERTY
1991 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR
JANUARY 1, 1994 - 6.00 %	0.000164584
JANUARY 1, 1995 - 8.50 %	0.000232877
JANUARY 1, 1996 - 8.50 %	0.000232877
JANUARY 1, 1997 - 8.25 %	0.000226027
JANUARY 1, 1998 - 8.50 %	0.000232877
JANUARY 1, 1999 - 7.75 %	0.000212329
JANUARY 1, 2000 - 8.50 %	0.000232877

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/8/99	5,688.10	8	9.66		5,688.10	1999 TOWN TAX	0.00	164.21	5,852.31
9/7/99	5,852.31	242	300.71		5,852.31	1999 SCHOOL TAX	0.00	384.33	6,236.84
12/31/99	6,236.84	115	152.29	462.66	6,699.30	ACCRUED INTEREST	0.00	0.00	6,699.30
TOTAL 1999		365	462.66	462.66			0.00	548.54	6,699.30

CUMULATIVE TOTAL TO DATE 1,809.81 1,809.81 0.00 4,889.49 6,699.30

ULSTER SAVINGS BANK
DIMERY INDEBTEDNESS
ACCOUNTING #3

TAXES PAID BY USB ON LAKEFRONT PROPERTY
1991 - 10/1/00

PRIME RATES EFFECTIVE:	DAILY FACTOR
JANUARY 1, 1994 - 6.00 %	0.000164384
JANUARY 1, 1995 - 6.50 %	0.000232877
JANUARY 1, 1996 - 6.50 %	0.000232877
JANUARY 1, 1997 - 6.25 %	0.000226027
JANUARY 1, 1998 - 6.50 %	0.000232877
JANUARY 1, 1999 - 7.75 %	0.000212329
JANUARY 1, 2000 - 8.50 %	0.000232877

DATE	BALANCE	# OF DAYS	ACCRUED INTEREST	ACCRUED INTEREST ADDED TO BALANCE	BALANCE	DESCRIPTION	RECEIPTS	EXPENSES	BALANCE
1/21/00	6,699.30	21	32.78		6,699.30	2000 TOWN TAX	0.00	162.16	6,861.46
9/11/00	6,861.46	233	372.30		6,861.46	2000 SCHOOL TAX	0.00	413.35	7,274.81
10/1/00	7,274.81	20	33.68	438.95	7,713.76	ACCRUED INTEREST	0.00	0.00	7,713.76
TOTAL 2000		274	438.95	438.95			0.00	575.51	7,713.76
CUMULATIVE TOTAL TO DATE			2,248.76	2,248.76			0.00	5,465.00	7,713.76

together toward marketing the property. Under these facts, the Court finds there was certainly an implied, if not virtually an express, agreement by the parties' conduct to continue the terms of the agreement far beyond the August 1, 1985 termination date.

As the approval process on Section I was nearing completion, Dimery brought in Loma Builders Ltd. ("Loma") as a prospective purchaser. Loma was to install the road and have the right to purchase Lots 2, 3, 4, 5 and 6. A contract of sale (Exhibit H-1) was executed on June 9, 1987. The price was \$75,000.00 per lot for a total of \$375,000.00. Lots were to be deeded over as demand was made for each lot and when each \$75,000.00 was paid. The unpaid purchase price was to bear interest at prime plus 2½ points. The right to purchase was for a period of 24 months. Loma paid a downpayment in the sum of \$37,500.00. Since title was retained by Ulster there was no mortgage with the normal release provisions.

As it turns out, Ulster was well advised to retain title. While Loma installed the road (Ulster having furnished the performance bond), paid interest for a time and purchased Lots 2 and 3, it failed to perform its other obligations and the deal fell apart sometime in late 1989. Since Ulster had title, there was no need for a foreclosure proceeding.

As they continued to operate under the terms of the agreement, Ulster sold Lot 1 with the house to Maloney for \$230,000.00 on December 13, 1989 (Exhibit M-1). On August 18, 1990, Lot 4 was sold to Nucatola for \$60,000.00 (Exhibit N). At this point, the parties had operated beyond the expiration date for more than five years and had only sold four of the eleven lots.

It seems appropriate at this point to take judicial notice of the very favorable real estate market of the middle 1980's which undoubtedly encouraged the agreement. However, the real estate market was severely affected by the stock market decline in 1987. Undoubtedly, this was an additional factor in preventing a speedy and profitable sale of the Valley property.

On March 26, 1991, Ulster sold Lots 5 thru 11 to Reymert Construction Corp. ("Reymert") for \$270,000.00. This full purchase price was credited to the joint venture and the parties agreed at trial that no further sales need be considered. It turned out that Reymert also defaulted on its obligation. Ulster later commenced foreclosure and eventually assigned its rights to one Eric Goldfine on February 22, 1996 (Exhibit X). At this point, all of the property was disposed of almost 11 years after the original agreement.

The facts set forth above demonstrate that this was indeed a difficult property to develop and to market. The unforeseen difficulties and delays in obtaining approvals and finding successful buyers caused this venture to miss a very favorable market which probably could or would have generated the profit Dimery and Ulster foresaw on March 1, 1985 and sought to achieve.

In the meantime, Ulster had commenced a proceeding in September, 1992 in Carmel Justice Court to recover possession of the Lake property, alleging Dimery was a month-to-month tenant holding over. A notice terminating her tenancy had been served upon Dimery on January 27, 1992. This notice was in effect a termination of the agreement if the agreement was not otherwise terminated when

the property was sold to Reymert. There is no explanation for the eight month delay in commencing the proceeding. In any event, the presiding Town Justice, who was involved in the Loma transaction, disqualified himself and the matter was eventually transferred to the Town of Putnam Valley Justice Court.

While the Justice Court case was pending, Dimery commenced this action in early 1993 alleging unjust enrichment and fraud. The complaint seeks the imposition of a constructive trust, an accounting and right to redeem, an order determining that the deeds to Ulster are void and an order quieting title as well as other relief.

Shortly thereafter, Dimery moved in this Court for a stay of the summary dispossess proceeding pending in Putnam Valley Justice Court. This Court, recognizing the substantial issues in this action and its complexity, stayed the Justice Court action and consolidated the same with the instant action by decision and order dated June 18, 1993.

There followed an extended period of discovery including motions. Depositions of a number of witnesses were ultimately scheduled upon completion of an enormous amount of paper discovery. In 1995 there was an indication of a possible settlement. By stipulation, the matter was adjourned from time to time in order to facilitate settlement. There was at one point in June, 1995, an indication that sale of the Lake property was being discussed. Negotiations continued as did further discovery and a note of issue was filed in July, 1997 with the understanding there were still some items outstanding. At one point, Dimery refused to allow an appraiser to inspect the house. Ultimately, on September 2, 1997, this Court

ordered her to permit access by an appraiser and the appraisal was completed. The file indicates that in October, 1997, Ulster was making a proposal which might lead to a settlement.

At about that point in time, the undersigned was assigned to Dutchess County to preside over the trial of *Pagones v. Brawley, Maddox, Mason and Sharpton*. This high profile and contentious matter involving multiple defendants and numerous defamatory statements as well as constitutional issues ultimately lasted 8½ months. During this period, County Court Judge William B. Braatz, as an Acting Supreme Court Justice, handled this case.

During this time, new counsel for both Dimery and Ulster arrived upon the scene and needed an opportunity to "get up to speed." Meanwhile, a suggestion that this case would be appropriate for a Judicial Hearing Officer was rejected by the parties.

Upon my return to Putnam County, the matter was re-assigned and a conference was held on December 22, 1998. Thereafter, a trial was set for April 5, 1999. On that date, a lengthy pre-trial conference explored various settlement options. As a result of an in-depth analysis of Dimery's claims, it was apparent that in spite of voluminous discovery there had never been a complete title search by either party to verify or refute Dimery's claims that Ulster had disposed of properties and not credited the joint venture. The parties agreed to share the expense of a complete title search of all the properties and lots involved in all the various transactions in the hope that this might lead to a settlement. The Court suggested a knowledgeable independent title searcher who regularly works in Putnam

County. The parties and counsel agreed to order the search and the trial was put over.

It was apparent to the Court that the search process was complicated by the various sales, foreclosures and mortgages involving re-sales of the various lots. In addition, the busy real estate market required the title searcher to perform services for other regular customers. The result was that the search consisting of several hundred pages (Exhibit 28), was not completed until mid-fall, 1999.

A final conference was held on November 17, 1999 following review by counsel of the title search. A last effort to resolve the case was unsuccessful and the trial was scheduled for December 13, 1999.

The matter was tried by this Court without a jury over several weeks commencing December 13, 1999 and ending on January 7, 2000. One hundred thirty-eight exhibits were submitted at the trial. It should be noted that when counsel pre-marked the exhibits, letters were inadvertently assigned plaintiff Dimery's exhibits rather than customary numbers, and numbers were assigned to defendant Ulster's exhibits rather than letters. Accordingly, care should be exercised in noting reference to exhibits to avoid confusion as to whether they are plaintiff's or defendant's exhibits.

At the conclusion of the trial, a schedule for submission of briefs was ordered. All briefs and reply briefs were filed as of April 12, 2000.

Dimery's claims that there was a substantial profit realized from the venture depended on a host of assumptions as to how the agreement should be construed and

how various sales and transactions should be treated for accounting purposes. Plaintiff's exhibits XX-1 to XX-19 are a series of accountings prepared by Dimery's accountant, each of which assumes that a particular asset or transaction is to be treated in a certain manner as plaintiff contends.

Similarly, Ulster, over an extended period furnished at Dimery's and/or counsel's request, a series of accountings showing substantial losses, none of which seem to be particularly consistent (Exhibits 5, 8, 9, 10, 11, 12, 13 and 14). In addition, Ulster had an independent accounting prepared by an outside firm (Exhibit 29). Both accountants basically indicated at trial that they prepared the accountings based upon information and assumptions they were given by their respective clients or counsel.

In the case of Dimery, the accountant made assumptions how certain transactions should be treated so that the joint venture appeared to make a substantial profit. In the case of Ulster, the assumption was to treat the joint venture agreement as fully effective and to credit amounts as Ulster had done in its records which then shows a huge loss. There is a difference of as much as 1½ to 2 million dollars between Dimery's claim there was a profit and Ulster's claim there was a loss.

The result is a real dilemma for the Court, which was discussed with counsel at the conclusion of the trial. Since the respective accountings assume various facts, a proper accounting, fair to both parties and resulting in a proper bottom line figure, can only be reached by first making findings of fact or legal rulings on each item in dispute, and then preparing a proper final accounting based upon those findings and rulings. There is no way that justice

could be accomplished in this case by accepting one accounting and rejecting the other since both are seriously flawed.

As discussed with counsel at the conclusion of the trial, plaintiff Dimery's brief was to clearly address each major item in her various accountings favorable to her position and defendant Ulster was to clearly address each item raised by Dimery. Unfortunately, the briefs tended to mix various items to be determined and this has resulted in making it difficult for the Court to avoid repetition and to render a clear and concise decision as in the normal course.

It was agreed that once the Court has made its findings on each item, the accountants will work together to prepare an amended accounting which will reflect the rulings of the Court. The resultant numbers will then be included in a judgment to be entered in accordance with the Court's findings and decisions and the accountants' joint amended accounting.

It is now the Court's duty and responsibility to weigh all the evidence in this unusual case and to determine the validity of Dimery's various claims. In considering the overall picture, the Court will also examine the agreement as to its fundamental fairness both as a short term agreement and more importantly its effect as a long term agreement.

FINDINGS AND CONCLUSIONS

PLAINTIFF'S POINT I - The deed from plaintiff to defendant was a mortgage.

There is a general body of law in some states where a lender making a loan on real estate holds title as security for the loan. This is usually known as a deed in trust.

In New York, however, title is normally conveyed and a mortgage is given back as security with both instruments to be recorded simultaneously. There are, however, some occasions in New York when a particular transaction may have the characteristics of a mortgage although not designated as such. In those cases, the court's, upon appropriate proof, have held the parties relationship to be that of mortgagor and mortgagee as in the several cases cited by plaintiff in support of her position that the deeds to Ulster should be deemed to create a mortgagor-mortgagee relationship.

Were this an original transaction cast solely in terms of specific indebtedness and with retention of title by Ulster, plaintiff's arguments might merit some serious consideration. However, given the plaintiff's history of not making a single payment on the original mortgages for over two years and giving a dishonored check at closing, the Court finds the agreement of March 1, 1985, Exhibit A, was in fact a work out agreement and a new joint venture. This work-out was a substantial concession to plaintiff who was seriously in default. This agreement allowed her to stay in possession which was highly unusual. There is no rational explanation in the lengthy record in this case for non-payment for over two years and no effort to make even a partial payment in some reasonable amount.

Under these circumstances, the Bank was free to make such terms and conditions as it deemed appropriate as witnessed by the specific terms of the agreement.

Fixing the amount of the accumulated debt in a work-out agreement and embarking on a new joint venture will not be construed as simply continuing a mortgage debt and maintaining a mortgagor-mortgagee relationship. This is especially true where plaintiff was put in the position of sharing in a potential profit from the venture. The setting of the amount of indebtedness in the agreement was not for the purpose of recasting the mortgage as plaintiff claims. It was rather as Mr. St. John testified necessary to fix the debt in order to determine whether or not there would be a profit at the end of the venture.

At the time plaintiff expressly conveyed title to the Bank in the agreement, she specifically acknowledged ownership of Ulster free and clear of any claims, defenses, reservations or obligations.

In effect, plaintiff is seeking to disavow Ulster's ownership by asking this Court to find the deed to be a mortgage. This would be in contravention of her acknowledgment of Ulster's ownership.

If there were other factors present to form a basis to attack the validity of the agreement, it might be a different story, however, we have here an astute and intelligent plaintiff who proposed the joint development of the Valley property to Ulster and voluntarily agreed to the terms set forth in the agreement.

While some of the provisions in the agreement in hindsight turned out to be onerous over the long term, they were not unreasonable for the five month time frame suggested by plaintiff and set forth in the agreement. There is no basis to set aside the agreement or to find the original agreement fraudulent and nonbinding on the plaintiff.

During the trial, the Court indicated it was inclined to view the agreement in plaintiff's own words as creating a joint venture.

Plaintiff's complaint, paragraph 9, states that "the parties undertook a joint venture pursuant to the Agreement to subdivide and develop parcels on Union Valley Road." Accordingly, by her own admission plaintiff considered this a joint venture at the time her complaint was drafted and served.

Whether one calls it a joint venture or work-out agreement or whatever else, there is a clear intent to place title in Ulster and plaintiff knowingly acknowledged ownership in Ulster free and clear of any claims, defenses, reservations or obligations. Plaintiff cannot now be heard to claim the arrangement was that of mortgagor-mortgagee.

To declare, on the special and unusual facts in this case, that the deeds should be considered a mortgage would require the application of equitable principles. One who seeks equity must do equity. Having issued a bad check at closing and having failed to pay even one single penny on four mortgages for two years, plaintiff cannot be considered as coming to this litigation with clean hands. As stated in *Pecorella v. Greater Buffalo Press*, 107 AD2d 1064, 1065:

"Finally, and extremely relevant to the instant case, the party seeking equity must do equity, i.e., he must come into court with clean hands (*Grosch v. Kessler*, 256 NY 477; *Haskins v. Thomajan*, 99 AD2d 463; *Muscarella v. Muscarella*, 93 AD2d 993). The misconduct which will bar equitable relief need not be sufficient to

constitute the basis of a legal action; any willful conduct 'which would be condemned and pronounced wrongful by honest and fair-minded men, will be sufficient to make the hands of the applicant unclean' (20 NY Jur, Equity, § 107) as long as the conduct pertains to the matter in litigation (*Agati v Agati*, 59 NY2d 830; *Seagirt Realty Corp. v Chazanof*, 13 NY2d 282, 285-286)."

The agreement of March 1, 1985 which Dimery asks the Court to construe as creating a mortgagor-mortgagee relationship is unambiguous. It clearly envisioned that Dimery would convey title to all four parcels to Ulster and that she would acknowledge title in "Ulster free and clear of any claims, defenses, reservations or obligations."

As a general rule, a court should not re-write a contract without a valid basis to do so.

"The jurisdiction of equity to grant specific performance of contracts, or to reform or cancel them in a proper case, is well settled. However, in the absence of fraud, mistake, duress or undue influence, bad faith, unconscionable conduct, or the like, a court of equity will not disturb contract rights as evidenced by a writing which purports to express the intention or will of the parties to the agreement. Stability of contract obligations must not be undermined by judicial sympathy. A court of equity is not at liberty to revise or rewrite a contract while professing to construe it. Equity should not intrude itself where knowledgeable parties contract and where they have not been overborne by actions of the other party." 55 NY Jur 2d Equity § 60 and cases cited.

For the above reasons, this Court as a matter of discretion declines to find the deed or deeds from plaintiff to defendant to be mortgages. However, the Court in declining to exercise its equity powers regarding this initial issue raised in plaintiff's brief does not intend to foreclose the application of equitable principles with respect to other issues raised during the trial. As stated in 55 NY Jur 2d Equity § 60:

"Also, a court of equity may devise a remedy that extends or exceeds the terms of a prior agreement between the parties if it is necessary to make the injured parties whole."

PLAINTIFF'S POINT II – The agreement between plaintiff and defendant is void for lack of consideration.

Plaintiff's argument that the agreement lacked consideration is without merit. Defendant gave up its right to occupy and to sell plaintiff's residence. It undertook to advance monies on behalf of the joint venture and to pay taxes and insurance on her residence. Other provisions in the agreement for plaintiff's benefit also constituted ample consideration.

PLAINTIFF'S POINT III – The agreement between plaintiff and defendant was modified.

This point is somewhat complicated since it requires consideration of several alleged modifications.

Initially, it is obvious that the parties continued to operate under the March 1, 1985 agreement for many years until all the Valley property was finally sold. St.

John acknowledged that the agreement was extended by the parties conduct (TR 962).¹

With respect to calculation of interest, plaintiff claims that Ulster furnished accountings based upon simple interest as distinguished from monthly compounded interest. This is confirmatory of plaintiff's testimony that interest was discussed and modified to call for simple interest. Accordingly, the Court determines that the agreement was in fact modified in this regard to provide for simple rather than compound interest. This would be a logical modification of a five month agreement providing for 13½% interest compounded monthly which if performance took place within that time or a reasonable time thereafter would not be unduly burdensome. However, in this case, where the agreement and the obligation has continued for over fifteen years, compounding interest monthly at 13½% per annum would be truly unjust.

Dimery also argues in this point that the agreement was modified to eliminate her obligation to pay rent. Once again noting the short, five month term of the agreement, the provision for monthly rental of One Thousand Eight Hundred Seventy Eight and 70/100 Dollars (\$1,878.75) per month was perhaps not unreasonable. It appears that this unusual number for a rental amount bore a relation to the monthly interest on the indebtedness on the Lake property. The fact that rental was not shown in the Bank's accountings until after litigation was commenced is a persuasive indication that the agreement was modified to eliminate the rental payment during the joint venture.

¹ References to "TR" are to the transcript of the non-jury trial.

This modification to eliminate rental, however, cannot equitably be continued beyond the term of the joint venture for it is only fair that once the venture ended with the sale to Reymert in March, 1991 and Dimery failed to purchase the Lake property as provided in the agreement for \$150,000.00, she should in all fairness be required to pay rental. It is not unreasonable at this point in time that she should pay interest on the mortgage as well as the rental which was set and agreed to in the original agreement.

The value of the Lake property was described when the venture ended as at least twice the amount of the mortgage if not substantially more, therefore, the interest on the Lake property plus the rental figure the parties agreed upon would at that point constitute an approximate and reasonable charge from March, 1991 forward. This is especially true since Dimery had occupied the premises without any payment of interest since December, 1983 or rent since March 1, 1985.

PLAINTIFF'S POINT IV – The arrangement between the parties was not a joint venture.

This point has already been addressed above. As noted, Dimery in her complaint characterized the parties' arrangement as "a joint venture pursuant to the agreement to subdivide and develop parcels on Union Valley Road." This Court believes under the special facts disclosed in this three week trial and the seriously delinquent mortgages involved that the agreement was a work-out of the delinquency and the establishment of a joint venture as alleged in her complaint. The cases cited by Dimery are not applicable to the facts in this case. The reservation of control was a reasonable provision given the long history

of non-payment. As noted hereinabove, the Court declines to hold that the agreement simply established a mortgagor-mortgagee relationship.

PLAINTIFF'S POINT V – The agreement with Loma Builders constituted a sale at the time it was entered into.

This argument is similar to the argument in Point I and plaintiff now asks the Court to examine the Loma transaction and hold that it was a *de facto* sale and should be treated as creating a mortgagor-mortgagee relationship. The Loma transaction, unlike the workout and joint venture agreement of March 1, 1985 (Exhibit A), was an original transaction which as plaintiff argues bore many of the features associated with a mortgage. While Ulster argues that it should be construed as an option to buy each lot, it can legitimately be argued that the per lot price constitutes a release figure to release each lot. A major factor in this transaction was the assumption of road installation costs by Loma. This was a substantial obligation and certainly consistent with a sale as opposed to a mere option. Similarly, the apportioning of taxes to the date of the agreement and assuming the obligations to pay future taxes are consistent with a sale. If this were construed as an option, Loma would be paying \$37,500.00, future taxes as well as road installation costs for a mere option. Assumption of these heavy obligations by Loma is indicative of a *de facto*, sale and the Court so holds. There are sufficient incidents of ownership vested in Loma to logically reach this conclusion (see, *Bean v. Walker*, 95 AD2d 70 [1983]). It is also relevant that Ulster assigned a mortgage number to the account and referred at times to the transaction as a mortgage. Accordingly, the entire price of \$375,000.00 should be credited to the joint venture as of the date of the agreement.

Ulster is correct that when the Loma transaction, which was extended timewise, finally fell apart, the joint venture account would have to be adjusted to reflect only the sums actually received and to add back as a debit the portion of the \$375,000.00 that was never received. This adjustment will need to be made during phase two of the trial when the accountants are to revise the accounting to reflect the determinations made herein. To the extent that Dimery claims credit for \$375,000.00 without adjustment for amounts never received she is incorrect. She cannot legitimately claim credit for sums never received.

PLAINTIFF'S POINT VI – Defendant under-reported the Reymert Construction Corp. transactions.

Dimery claims that Ulster failed to credit the joint venture with all the funds received from the Reymert transactions. Noticeably absent from the trial were contracts, deeds and testimony of relevant witnesses which would clearly document these claims. Nor can the Court find any basis to conclude that various lots were sold twice and not accounted for. The title search (Exhibit 28) offers no clear evidence which would in any manner confirm these allegations. In fact, it was admitted at trial that plaintiff's accountant was told to assume that there had been multiple sales and unreported sales and to prepare his original accounting on that basis.

Without belaboring the point, the Court concludes that the Reymert transactions are accurately reflected in the trial record and explained in Ulster's brief. Plaintiff's brief even arrives at two different amounts claimed as credits to the joint venture (pp 38, 45). At the trial, Ulster explained the sale of each lot and there was no credible

evidence presented by plaintiff that would indicate Ulster sold any lots twice and failed to account for the proceeds.

Tax records, an affidavit that reflects balances in a different time frame, and use of inappropriate forms to reflect transactions and various other items submitted at trial do not rise to the level of proof required to sustain these claims. The fact that Ulster independently financed construction of houses on the lots was presumptively beneficial to the joint venture since it was to assist in obtaining payoff of the Reymert mortgage. It appears that the bank lost money on these construction loans when they were not repaid.

Dimery has chosen to accuse Ulster of making false documents and suspicious entries and funneling monies without presenting any credible evidence. The failure to call witnesses who might support her claims and the presentation of unpersuasive miscellaneous items at trial does not meet the burden of proof to establish fraud by clear and convincing evidence as hereinafter discussed. Furthermore, the history of this problem development does not support a claim that the Reymert transactions would ever generate the sum of \$870,000.00 as Dimery claims. It was a difficult subdivision and it took three different purchases to finally dispose of the lots.

PLAINTIFF'S POINT VII – The Court should quiet title to the Lakefront property.

Dimery is correct in noting that she owned a separate lakefront parcel which was never a part of the dealings with the bank. Accordingly, judgment may be entered herein reflecting that she is vested with sole and exclusive title to this parcel.

PLAINTIFF'S POINT VIII - The defendant committed fraud.

In order to sustain a claim of fraud Dimery must prove fraud by clear and convincing evidence (see, *Simcusi v Saeli*, 44 NY2d 442 [1978], *Rudman v Cowles Communications*, 30 NY2d 1 (1972), 60 N.Y. Juris 2d §236; see also, Pattern Jury Instructions 1:64 and cases cited).

While there were many loose ends and extremely sloppy legal work and use of inappropriate forms, failure to timely record instruments and many other shortcomings as noted in plaintiff's brief, none of these individually or collectively constitute proof of fraud by clear and convincing evidence. At best, Dimery builds a series of suppositions and inferences to arrive at the conclusion that Ulster received a total of \$870,000.00 from the Reymert transaction. Given the difficult nature of this subdivision with its wetlands and drainage problems and its prior history with Loma, it is difficult to believe that Reymert would have paid this huge sum of money for these lots and then allowed a foreclosure proceeding. Once again, it was crucial for Dimery to call principals from Reymert or those with knowledge to support her theory that she was defrauded. Reliance on use of purchase money mortgage forms where other documents also refer to these mortgages as building loans is not evidence that fraud was committed by Ulster.

Ulster's foreclosure proceedings were bizarre to say the least. To begin with, there is absolutely no explanation why Dimery was allowed to go two years without a single payment of any amount on her mortgages.

Foreclosure proceedings are normally brought in the county where the property is located. Who decided to bring the proceeding in Ulster County was never disclosed nor explained. In any event, this issue is moot since as a part of the agreement of March 1, 1985, Dimery voluntarily entered into a joint venture and deeded her property to the bank. There was consideration as noted hereinabove and the parties embarked on their joint venture as admitted by Dimery. The fact that for many reasons the venture did not generate funds to pay off her indebtedness does not establish fraud even were the burden of proof simply by a preponderance of the evidence.

The Court will now deal with other issues raised in Point VIII.

Plaintiff claims that "the defendant swept additional, unmortgaged property," into the so-called "pot" and that plaintiff is entitled to a credit for the value of the larger improved Valley parcel which was not foreclosed. Ulster claims that through a clerical error this portion of the Valley property was omitted from the foreclosure. This is another example of the sloppy and incompetent legal work involved in this joint venture.

However, the evidence is clear that Dimery chose to mortgage the entire Valley property. To think for a moment that Ulster would loan the total funds involved on a narrow strip, part of a former railroad bed consisting of a few acres, is ludicrous. The omission from the foreclosure proceeding was corrected when Dimery voluntarily entered the joint venture agreement of March 1, 1985 and deeded all four parcels, including the larger improved Valley parcel, to Ulster. She cannot legitimately claim that somehow she should be credited with the full value of a

parcel which was always intended to be a part of their venture. This was not a new and separate parcel as she tries to argue, for which she should be entitled to a separate credit. There is no basis for this Court to conclude that a credit should be given her for the entire value of the improved parcel which was part of the Valley property.

Plaintiff claims that the summary proceeding was part of the alleged fraud. This Court removed the Justice Court proceeding to this Court to be dealt with herein. Once again Dimery is ignoring the agreement of March 1, 1985. Whatever the form of the proceedings, the substance of the agreement is clearly set forth in paragraph 7:

"7. In the event that ULSTER, in its sole discretion, determines that DIMERY is not in full compliance with all the provisions, conditions and obligations undertaken under this Agreement, then in such case ULSTER may give DIMERY a 30 day written notice that this Agreement is terminated and that DIMERY shall vacate said premises. If all the parcels set forth in Schedule A of this Agreement are not disposed of under this Agreement on or before August 1, 1985, then this provision as to the use and occupancy of parcels III and IV by DIMERY shall terminate and DIMERY shall vacate said premises unless the parties hereto consent in writing to some other alternative as to this item."

Once again careless legal work and terminology do not constitute fraud. Whoever determined to bring a summary proceeding alleging a month-to-month tenancy and a holdover obviously failed to read the plain language set forth above. Ulster, under the terms of the agreement, needed only to give Dimery a 30-day termination notice

and then to seek judicial assistance should she fail to vacate.

Dimery's argument that Ulster's only remedy would have been a foreclosure proceeding is without merit since as held above this was a joint venture and not a continuation of a mortgagor-mortgagee relationship.

PLAINTIFF'S POINT IX - There has been no correct accounting from defendant.

The Court fully agrees with this general statement but finds that Dimery has also failed to submit a proper accounting. This Point IX is a summary, in effect, of Dimery's claims.

It is the Court's intention to furnish rulings and determinations herein which will allow for preparation of a proper and fair accounting, regardless of what the final balance may be and in whose favor. The end result can only be determined in phase two of the trial after the accountants confer and prepare their joint revised accounting for the Court.

Addressing plaintiff's arguments which are in the nature of a summary in this Point IX as set forth in lettered paragraphs, the Court rules as follows:

A. The Court agrees that interest should be simple interest per annum. To charge interest compounded monthly for fifteen years as opposed to for 5 months as originally agreed would be unfair and inequitable.

B. The Court agrees with Dimery that there appears to have been a modification of the agreement to eliminate rent as the joint venture

progressed. This may have been some consideration for her extensive efforts on behalf of the joint venture. However, once the agreement terminated with the Reymert sale in March, 1991 and Dimery failed to purchase her house for \$150,000.00, well below the market value and having never paid anything for nine years, she should be held accountable for the rental amount set in the agreement from that date forward.

C. The Court agrees that Dimery should not be charged with real estate taxes paid by Loma or Reymert.

D. Dimery presents an alternate argument here that she should be credited with her equity above the mortgage with respect to the improved Valley property. Her equity is established in the record from an appraisal of the property at \$260,000.00 (Exhibit QQ) and the mortgage balance on this parcel of \$133,600.00. The difference constituted the equity which she contributed to the joint venture. It appears logical and fair that she should be credited in the accounting with her equity in this property.

In reaching this conclusion, the Court is mindful of Ulster's incompetence in omitting this parcel from the foreclosure as well as the many other errors and omissions disclosed during the trial. Basic equity and fairness dictates that Dimery should receive some consideration in this regard.

E. The Court agrees that the \$375,000.00 on the Loma transaction should be credited as a sale, however, the unpaid balance must be added back to the indebtedness to Ulster when the Loma transaction folded.

F. The Reymert funds were properly credited by Ulster and Dimery has failed to prove the multiple sales and transactions she claims took place.

G. Dimery conveyed the Lake property to Ulster on March 1, 1985. A review of the deed, Exhibit 28, reveals no reservation by Dimery of the right to any further [sic] condemnation proceeds. The proceeds of a 1994 road widening condemnation by New York State have been held subject to resolution of the parties' claims herein. Since Dimery did not own the property at that time, she cannot claim the condemnation proceeds. However, the proceeds should be paid to Ulster together with interest, if any, and reflected in the joint venture accounting as a credit.

H. Dimery fails to prove that there were multiple sales of Lot 4. Assessors records do not rise to the level of proof required. Once again, the Court notes plaintiff's failure to call any witnesses with personal knowledge who could support this claim.

I. Plaintiff is not entitled to claim interest on the \$375,000.00 Loma transaction. It did not eliminate the indebtedness due the joint venture and as noted she cannot claim credit for the amount that was ultimately not paid and which must be added back to the indebtedness. Plaintiff's other arguments are without merit.

J. There is nothing the Court is aware of in the record with regard to loss of use of the Lakefront parcel or any testimony which would establish an amount or basis for the award of any damages.

K. There is no basis to award Dimery costs and expenses of this litigation. Whatever expenses have been incurred have resulted in her occupancy of the property without any payment for more than fifteen years. While charging that Ulster has dragged her through this litigation, she fails to take responsibility for a self-created situation which should and could have been resolved with some reasonable degree of cooperation and with some degree of reasonable objectivity.

L. Dimery has failed to prove fraud and there is no basis for an award of punitive damages. This is especially true where the bank was extremely liberal in the manner in which it treated Dimery as compared to any other mortgagor. Normally, a bank would have pounced upon a mortgagor-debtor much sooner and more harshly than in this case. It was highly unusual for a bank to enter a joint venture with a debtor and thus afford Dimery some reasonable opportunity to pay off her indebtedness. At the same time the bank advanced substantial funds toward development and other expenses. Under these circumstances to seek and ask for punitive damages is like biting the hand that feeds you. There are no grounds in this case that would rise to a level which would in any way justify this Court in imposing a punitive damage award.

PLAINTIFF'S POINT X - The Court should impose a constructive trust. Since plaintiff Dimery has failed to prove fraud, there is no basis for imposing a constructive trust.

CONCLUSION

The summary proceeding removed to this Court from Justice Court, Putnam Valley, will be held in abeyance pending the revision of this accounting and the results thereof.

The accountants are directed to confer and to prepare a joint account consistent with the rulings herein and to submit the same to the Court and to the parties on or before July 14, 2000. A conference is scheduled for August 15, 2000 at which time counsel shall settle, on notice, a proposed judgment based upon the determinations herein rendered.

This shall constitute the decision and interim order of the Court.

/s/ S. Barrett Hickman
S. BARRETT HICKMAN, J.S.C.

DATED: May 19, 2000
Carmel, New York

Ulster Savings Bank

280 WALL STREET • BOX 3337 • KINGSTON, N. Y. 12401 • 914 338-6060

June 5, 1989

Mrs. A. Lorraine Dimery
Box 338
South Lake Boulevard
Mahopac, NY 10542

Dear Mrs. Dimery:

As you know we have been negotiating for several months in connection with your request for a loan of seventy-five hundred dollars (7,500.00) to take care of some of your personal needs. As I indicated to you before our Board was most reluctant to make any such loan particularly in view of the past history of your obligations with Ulster Savings Bank. However, at you [sic] insistence, I once again talked to the Committee about such an arrangement and they have agreed to make the loan to you based on extention [sic] of your contract with Ulster Savings dated March 1, 1985 and your reduction on any "profit" from 33 $\frac{1}{3}$ % to 25%.

Since you are not represented by an attorney in any of these negotiations, I would respectfully urge you and request that you obtain services of an independent attorney to review the agreement to see that you [sic] rights are fully protected. Through out these negotiations [sic] I have acted solely on behalf of Ulster Savings Bank and as the Chairman of that Bank, I have no duty and or obligation to protect your interests, since they are necessarily adversarial to the Bank.

If you decide to proceed without submitting agreement for review by your attorney, I would ask that you sign a

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copy of this letter at the bottom, acknowledging my recommendation to you.

Very truly yours,

/s/ Howard C. St. John
Howard C. St. John
Chairman-CEO

HStJ:apg

DEFENDANT'S EXHIBIT 5

Ulster Savings Bank

280 WALL STREET • BOX 3337 • KINGSTON, N. Y. 12401 • 914 338-6060

April 25, 1991

Mrs. Alice Dimery
P.O. Box 338
Mahopac, NY 10542

Dear Mrs. Dimery:

I'm enclosing herewith a report given to me by our mortgage department of all of the funds received by Ulster Savings Bank on property owned by it as a result of the foreclosure of your mortgages to the Bank, together with a list of all of the expenses incurred by the bank in managing and selling their properties. As you can see there is still a shortfall of seventy-thousand two hundred eighty seven dollars and fifty-two cents (\$70,287.52) after the sale of all of the properties (except the Lake Carmel property) which was originally mortgaged by you to the Bank.

If you have any questions concerning any portion of this accounting, please feel free to contact Mr. John Schussler.

It now becomes necessary for us to sell our remaining piece of property which is currently being occupied by you. I once again offer to you the opportunity to purchase this property for the appraised value. In the event this does not prove of interest to you, we will need possession of the property so that we may place it on the open market.

All of the foregoing information is provided you without any acknowledgement of any legal rights to this

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information, or to any other aspect of these transactions. This information is provided to you solely as a matter of courtesy, without any legal implications flowing there from.

Very truly yours,

/s/ Howard C. St. John
Howard C. St. John
Chairman-CEO

HCStJ:apg

Enc.

AMOUNTS RECEIVED

6/9/87	\$37,500.00	CAINO DOWNPAYMENT
9/6/89	\$150,000.00	SALE OF LOTS 2&3
8/18/90	<u>\$60,000.00</u>	SALE OF LOT 4
	\$247,500.00	

12/13/89 SALE OF UNION VALLEY ROAD HOUSE

SELLING PRICE	\$230,351.25
BROKER	-13,740.00
ACCTS/RECEIVABLE	<u>-1,755.50</u>
NET AMOUNT	\$214,855.75

3/26/91 SALE OF BALANCE OF SUBDIVISION TO REYMERT

\$270,000.00	
INTEREST PAID BY CAINO	\$72,936.89
RENTS PAID UNION VALLEY ROAD	\$22,804.00
<u>TOTAL RECEIVED</u>	<u>\$828,096.64</u>

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ORE	LAKE SHORE BLVD.	\$190,665.76
BLAANCES [sic]	UNION VALLEY ROAD	<u>168,022.39</u>
		\$358,688.15
TAXES PAID		\$92,210.42
ACCOUNTS RECEIVABLE SUBDIVISION		
APPROVALS		\$131,057.44
INTEREST DUE SOUTH LAKE BLVD.		\$167,558.72
INTEREST DUE UNION VALLEY ROAD		\$110,498.18
INTEREST DUE ON TAXES		\$16,218.74
INTEREST DUE ON RECEIVABLES		<u>\$22,152.51</u>
TOTAL DUE TO ULSTER SAVINGS BANK		\$898,384.16
AMOUNT DUE AND OWING		\$70,287.52

DEFENDANT'S EXHIBIT 15

**Schussler's Hand Written "1989 ORE Activity"
Sheet undated**

1989	ORE ACTIVITY
Beginning 1/1/89	
	Dimery #1 96,100
	Dimery #2 147,600
8/30/89	Brissette transferred to ORE 49,533.62
12/13/89	Dimery #1 sold to Daniel Moloney for \$229,000 ORE Balance to \$0.
12/28/89	Brissette sold to Richard Sears for \$60,500 ORE Balance to \$0.

DEFENDANT'S EXHIBIT 16

**Schussler's Hand Written "1989 ORE Activity"
Sheet undated**

2220-000 Deferred Profit ORE

Beginning Balance	32,549.40
Zolta ass. Accrual	-3,261.92
Dimery Profit	106,042.56
Brissette Profit	<u>10,356.34</u>
	\$145,686.38

3080-001 Income ORE

Crespi (land contract)	281.94
Burnham Woods	12,870.53
Brennie (JTT)	469.80
Tessier	<u>48,386.43</u>
total	\$62,008.70

RESIDENTIAL APPRAISAL REPORT

V

FD-100 (Rev. 1-6-65)

Borrower UNION SAVINGS BANK Property Address SOUTH LAKE BLVD. City CARLE (LAKE HAWAHOE) County Putnam State New York Zip Code 12571
 Local Description Part of Block 11 Lot 33 & 34 Block 111 Rte 108-11
 Sale Price \$ 10,000 Date of Sale 1/28/68 Loan Term 30 Property Value Appraised K Fee 1 Assessed 1 Deeds 1968
 Actual Real Estate Taxes 10 (or Loan charges to be paid by seller) 10 Other Loan Concessions None
 Lender/Client UNION SAVINGS BANK Address 200 Wall St. Kingston NY 12401
 Occupant Vacant Appraiser Reichlin Instructions to Appraiser at market value

Location ☐ Urban ☒ Suburban ☐ Rural
 Built Up ☐ Over 75% ☒ 25% to 75% ☐ Under 25%
 Growth Rate ☐ Fully Dev. ☒ Rapid ☐ Steady ☐ Slow
 Property Values ☐ Increasing ☒ Stable ☐ Declining
 Demand/Supply ☐ Shortage ☒ In Balance ☐ Over Supply
 Marketing Time ☐ Under 3 Mos. ☒ 4-6 Mos. ☐ Over 6 Mos.
 Present Land Use ☒ % 1 Family ☐ % 2-4 Family ☐ % Apts. ☐ % Condo. ☐ % Commercial
 Change in Present Land Use ☒ % Industrial ☐ % Vacant ☐ %
☐ Not Likely ☐ Likely (4) ☐ Taking Place (3)
 Predominant Occupancy ☒ Owner ☐ Tenant ☐ Vacant
 Single Family Price Range \$25,000 to \$30,000 Predominant Value \$30,000
 New vs. Old New vs. Old vs. Predominant Age 25 vs.

Notes: FIRM/GRI/ISA do not consider race or the racial composition of the neighborhood to be reliable appraisal factors.
 Comments including these factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, other, noise)
The subject is located in a well-established residential community.
There were no influences which would have a negative effect on value.
All support facilities are within a reasonable distance.

Dimensions 270 x 100 ft. Zoning classification Residential Present Improvements ☒ do ☐ do not conform to zoning regulations
 Highest and best use: ☒ Present use ☐ Other (specify) _____
 Public ☐ Other (describe) _____
 Slope ☒ Public ☐ Other (describe) _____
 Gas ☐ Well ☐ Other (describe) _____
 Water ☐ Septic ☐ Other (describe) _____
 Sewer ☐ Underground Street & Tel. ☐ Other (describe) _____
 Comments (favorable or unfavorable including any apparent adverse elements, encroachments or other adverse conditions)
There are no apparent adverse elements, encroachments or other adverse conditions.

☒ Existing ☐ Proposed ☐ Under Constr. No. Units 1 Type (det, duplex, semi-det, etc.) Detached Design (rambler, split level, etc.) Two story Exterior Walls Asbestos/Ungrt
 Yrs. Age: Actual 24 Effective 10 Hrs. Stories 2
 Roof Material Asphalt shingle Gutters & Downspouts None Window (type) Doublehung Wood ☐ Insulation ☐ None ☐ Floor ☐ Walls ☐
☐ Manufactured Housing ☒ Storm Sash ☐ Screens ☒ Combination ☐ Ceiling ☐ None ☐ Walls ☐
 Foundation Walls ☒ % Basement ☐ Floor Drain ☐ Finished Ceiling ☐
☒ Concrete Floor ☐ % Finished ☐ Finished Floor ☐
☐ Slab on Grade ☐ Crawl Space Evidence of: ☐ Dampness ☐ Termites ☐ Settlement None
 Comments The subject has a functional floor plan.

Room List	Poyer	Living	Dining	Kitchen	Den	Family Rm.	Rec. Rm.	Bedrooms	No. Baths	Laundry	Other
Basement											
1st Level											
2nd Level											

Finished area above grade contains a total of 5 rooms & 3 bedrooms. 3 baths. Gross living Area 3114 sq. ft. Rent Area 1407 sq. ft.
 Kitchen Equipment: ☒ Refrigerator ☒ Range/Oven ☐ Dishwasher ☐ Air Cond. ☐ Fan/hood ☐ Compact ☒ Washer ☐ Dryer ☐ Inadequate
 HEAT: ☒ Radiant ☐ Fuel ☐ Coal ☐ Gas ☐ Oil ☐ Electric ☐ Other ☐ None ☐ Adequate
 Floors ☒ Hardwood ☐ Carpet Over ☐ Concrete ☐ Other ☐ Inadequate
 Walls ☐ Drywall ☒ Plaster ☐ Other ☐ Inadequate
 Trim/Finish ☒ Good ☐ Average ☐ Fair ☐ Poor
 Bath Floor ☒ Ceramic ☐ Other ☐ Inadequate
 Bath Windows ☒ Ceramic ☐ Other ☐ Inadequate
 Special features (including energy efficient items)

ATTN: ☒ Yes ☐ No ☒ Stairway ☐ Drop-side ☐ Seats ☒ Flipped
 Finished (describe) ☒ Garage ☐ Built-in ☐ Attached ☐ Detached ☐ Car Port
 No. Cars 2 ☒ Adequate ☐ Inadequate Condition Average
 FIRM, ACES, PATIOS, POOL, FENCES, etc. (describe) Fence, Fireplace, Enclosed Porch

COMMENTS (including functional or physical inadequacy, repairs needed, modernization, etc.)
The subject is in average condition for its age. No inadequacies were noted.

Purpose of Appraisal is to estimate Market Value as defined in Certification & Statement of Limiting Conditions (FIRM Form 439/FMMA Form 1004B) as submitted to FMMA. The appraiser must attach (1) sketch or map showing location of subject, street names, distance from nearest intersection, and any easement conditions and (2) map showing location of improvements showing dimensions.

Measurements		Net Stories		Sq. Ft.	
21.00	33.00	2.0	=	1366.00	
17.00	45.00	2.0	=	1428.00	
6.00	25.00	2.0	=	300.00	

Total Gross Living Area (List in Market Data Analysis below) **3114**
 Comment on functional and economic obsolescence:
No functional obsolescence was observed.
No economic obsolescence was observed.

ESTIMATED REPRODUCTION COST - NEW - OF IMPROVEMENTS:			
Roofing	3114	Sq. Ft @ \$	55.00 = \$ 171,210
Exterior Siding	1557	Sq. Ft @ \$	25.00 = 38,925
Water, Well and Septic			
Fireplace			
Special Energy Efficient Items			
Porch, Patio, etc.	Enc Porch		
Garage/Car Port	500	Sq Ft @ \$	5.00 = 2,500
Site Improvements (driveway, landscaping, etc.)			

Less		Physical	Functional	Economic	
Depreciation	\$ 30,000	1	0	0	= \$ 30,000
Depreciated value of improvements					= \$ 190,635
ESTIMATED LAND VALUE					= \$ 120,000
(If indicated, show only locational value)					
INDICATED VALUE BY COST APPROACH					= \$ 340,635

The undersigned has reviewed three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment, reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	Southlake Blvd. Carmel	N. Lake Blvd. Carmel	N. Lake Blvd. Carmel	N. Lake Blvd. Carmel
Proximity to Subj.		1.5 Miles	1 Mile	1.5 Miles
Sales Price		\$125,000	\$150,000	\$136,000
Priced/ing area		\$125.00/sq	\$116.67/sq	\$105.3
Date Sold	11/85	Public Record	Public Record	Public Record
Date of Sale and Time Adjustment	11/85	11/85	10/85	11/85
Location	Similar	Similar	Similar	Similar
Site/View	0.5A/Superior	1.3A/Inferior	3A/Similar	1.5A/Inferior
Design and Appeal	2-Story/Good	Same/Good	Same/Good	Same/Good
Quality of Const.	Average	Similar	Similar	Similar
Age	55	55	55	55
Condition	Average	Similar	Similar	Similar
Living Area Room Count and Total	Total 0 rms Baths 7 3 1/2	Total 0 rms Baths 7 3 1/2	Total 0 rms Baths 7 3 1/2	Total 0 rms Baths 7 3 1/2
Gross Living Area	3114 Sq. Ft.	2600 Sq. Ft.	3000 Sq. Ft.	3000 Sq. Ft.
Design and Appeal	Full	Full	Full	Full
Unfinished Rooms	Unfinished	Unfinished	Unfinished	Unfinished
Exterior Utility	Average	Similar	Similar	Similar
Site Characteristics	None	None	None	None
Garage/Car Port	2 Car	2 Car	2 Car	2 Car
Enclosed Porch	Enclosed	Enclosed	Enclosed	Enclosed
Special Energy Efficient Items	None	None	None	None
Other (e.g. fireplaces, kitchen, etc.)	All Apps	All Apps	All Apps	All Apps
Fireplace	Fireplace	Fireplace	Fireplace	Fireplace
Conventional	Conventional	Conventional	Conventional	Conventional
Financing	Financing	Financing	Financing	Financing
Net adj. (Total)		11,000	14,000	14,000
Indicate Value of Subject		\$136,000	\$136,000	\$146,000

Comments on Market Data: The distance of sales 1 and 3 were expanded beyond the 1 mile range due to the lack of sales similar to subject within the required distance.

INDICATED VALUE BY MARKET DATA APPROACH: **\$136,000**
 INDICATED VALUE BY INCOME APPROACH: **\$136,000**
 This appraisal is made: ☒ as is ☐ subject to the repairs, alterations, or conditions listed below ☐ completed per plans and specifications.
 Comments and Conditions of Appraisal: Appraisal includes lots 33 and 34 of Lake Front lots, Section 24, Block 1 Lot 33 and 34. Appraisal based on Marshall and Swift cost data, handbook and market comparables.

Final reconciliation: The market data approach best reflects the attitudes of buyers and sellers in today's marketplace and is well supported by the results of the cost approach.

Construction Warranty: ☐ Yes ☐ No Name of Warranty Program: _____ Warranty Coverage Expense: _____
 This appraisal is based upon the above requirements, the certification, contingent and limiting conditions, and Market Value definition that are stated in: ☐ FIRM Form 439 (Rev. 10/75)/FMMA Form 1004B (Rev. 10/75) and with which I estimate the market value as defined, OF SUBJECT PROPERTY AS OF 5/74 1976 to be \$ 340,635 ☒ attached

Appraiser(s): **A. Reichlin** Review Appraiser(s) (if applicable): ☐ Did ☐ Did Not Personally Inspect Property

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Cottage		M		K		B		3		2		2 1/2		2 1/2		2 1/2		2 1/2	
Insured area above grade contains a total of <u>8</u> rooms, <u>4</u> bedrooms, <u>2</u> baths, <u>1</u> gross living area, <u>2,500</u> sq. ft. basement area, <u>250</u> sq. ft. porch.																			
Kitchen Equipment		<input checked="" type="checkbox"/> Refrigerator		<input checked="" type="checkbox"/> Range/Oven		<input checked="" type="checkbox"/> Dishwasher		<input checked="" type="checkbox"/> Freezer		<input checked="" type="checkbox"/> Compactator		<input checked="" type="checkbox"/> Washer		<input checked="" type="checkbox"/> Dryer		<input checked="" type="checkbox"/> Miscellaneous			
Heats		<input checked="" type="checkbox"/> Type <u>1</u> <u>BR</u> Fuel <u>Oil</u>		<input checked="" type="checkbox"/> Gas		<input checked="" type="checkbox"/> Electric		<input checked="" type="checkbox"/> Air Con		<input checked="" type="checkbox"/> Central		<input checked="" type="checkbox"/> Inner		<input checked="" type="checkbox"/> Outer		<input checked="" type="checkbox"/> Adornate			
Floor		<input checked="" type="checkbox"/> Hardwood		<input checked="" type="checkbox"/> Carpet Over		<input checked="" type="checkbox"/> Concrete		<input checked="" type="checkbox"/> Tile		<input checked="" type="checkbox"/> Stone		<input checked="" type="checkbox"/> Wood		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other			
Walls		<input checked="" type="checkbox"/> Drywall		<input checked="" type="checkbox"/> Plaster		<input checked="" type="checkbox"/> Brick		<input checked="" type="checkbox"/> Concrete		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other			
Trim/Finish		<input checked="" type="checkbox"/> Good		<input checked="" type="checkbox"/> Average		<input checked="" type="checkbox"/> Fair		<input checked="" type="checkbox"/> Poor		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other			
Bath Floor		<input checked="" type="checkbox"/> Ceramic		<input checked="" type="checkbox"/> Concrete		<input checked="" type="checkbox"/> Tile		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other			
Bath Wall/Floor		<input checked="" type="checkbox"/> Ceramic		<input checked="" type="checkbox"/> Concrete		<input checked="" type="checkbox"/> Tile		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other		<input checked="" type="checkbox"/> Other			
Special Features (Including energy efficient items)																			
ATTN: <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Kitchen <input checked="" type="checkbox"/> Drop-stain <input checked="" type="checkbox"/> Sealed <input checked="" type="checkbox"/> Floored <input checked="" type="checkbox"/> Heated <input checked="" type="checkbox"/> Car Port																			
GAR STORAGE: <input checked="" type="checkbox"/> Garage <input checked="" type="checkbox"/> Built-in <input checked="" type="checkbox"/> Attached <input checked="" type="checkbox"/> Detached <input checked="" type="checkbox"/> Other																			
NO. CARS: <u>2</u> <input checked="" type="checkbox"/> Adequate <input checked="" type="checkbox"/> Inadequate Condition <u>Average</u>																			
FIREPLACES, PATIOS, POOL, FENCES, etc. (describe) <u>Fireplace (1st fl.)</u> <u>2nd fl.</u> <u>3rd fl.</u> <u>4th fl.</u> <u>5th fl.</u> <u>6th fl.</u> <u>7th fl.</u> <u>8th fl.</u> <u>9th fl.</u> <u>10th fl.</u> <u>11th fl.</u> <u>12th fl.</u> <u>13th fl.</u> <u>14th fl.</u> <u>15th fl.</u> <u>16th fl.</u> <u>17th fl.</u> <u>18th fl.</u> <u>19th fl.</u> <u>20th fl.</u> <u>21st fl.</u> <u>22nd fl.</u> <u>23rd fl.</u> <u>24th fl.</u> <u>25th fl.</u> <u>26th fl.</u> <u>27th fl.</u> <u>28th fl.</u> <u>29th fl.</u> <u>30th fl.</u> <u>31st fl.</u> <u>32nd fl.</u> <u>33rd fl.</u> <u>34th fl.</u> <u>35th fl.</u> <u>36th fl.</u> <u>37th fl.</u> <u>38th fl.</u> <u>39th fl.</u> <u>40th fl.</u> <u>41st fl.</u> <u>42nd fl.</u> <u>43rd fl.</u> <u>44th fl.</u> <u>45th fl.</u> <u>46th fl.</u> <u>47th fl.</u> <u>48th fl.</u> <u>49th fl.</u> <u>50th fl.</u> <u>51st fl.</u> <u>52nd fl.</u> <u>53rd fl.</u> <u>54th fl.</u> <u>55th fl.</u> <u>56th fl.</u> <u>57th fl.</u> <u>58th fl.</u> <u>59th fl.</u> <u>60th fl.</u> <u>61st fl.</u> <u>62nd fl.</u> <u>63rd fl.</u> <u>64th fl.</u> <u>65th fl.</u> <u>66th fl.</u> <u>67th fl.</u> <u>68th fl.</u> <u>69th fl.</u> <u>70th fl.</u> <u>71st fl.</u> <u>72nd fl.</u> <u>73rd fl.</u> <u>74th fl.</u> <u>75th fl.</u> <u>76th fl.</u> <u>77th fl.</u> <u>78th fl.</u> <u>79th fl.</u> <u>80th fl.</u> <u>81st fl.</u> <u>82nd fl.</u> <u>83rd fl.</u> <u>84th fl.</u> <u>85th fl.</u> <u>86th fl.</u> <u>87th fl.</u> <u>88th fl.</u> <u>89th fl.</u> <u>90th fl.</u> <u>91st fl.</u> <u>92nd fl.</u> <u>93rd fl.</u> <u>94th fl.</u> <u>95th fl.</u> <u>96th fl.</u> <u>97th fl.</u> <u>98th fl.</u> <u>99th fl.</u> <u>100th fl.</u> <u>101st fl.</u> <u>102nd fl.</u> <u>103rd fl.</u> <u>104th fl.</u> <u>105th fl.</u> <u>106th fl.</u> <u>107th fl.</u> <u>108th fl.</u> <u>109th fl.</u> <u>110th fl.</u> <u>111th fl.</u> <u>112th fl.</u> <u>113th fl.</u> <u>114th fl.</u> <u>115th fl.</u> <u>116th fl.</u> <u>117th fl.</u> <u>118th fl.</u> <u>119th fl.</u> <u>120th fl.</u> <u>121st fl.</u> <u>122nd fl.</u> <u>123rd fl.</u> <u>124th fl.</u> <u>125th fl.</u> <u>126th fl.</u> <u>127th fl.</u> <u>128th fl.</u> <u>129th fl.</u> <u>130th fl.</u> <u>131st fl.</u> <u>132nd fl.</u> <u>133rd fl.</u> <u>134th fl.</u> <u>135th fl.</u> <u>136th fl.</u> <u>137th fl.</u> <u>138th fl.</u> <u>139th fl.</u> <u>140th fl.</u> <u>141st fl.</u> <u>142nd fl.</u> <u>143rd fl.</u> <u>144th fl.</u> <u>145th fl.</u> <u>146th fl.</u> <u>147th fl.</u> <u>148th fl.</u> <u>149th fl.</u> <u>150th fl.</u> <u>151st fl.</u> <u>152nd fl.</u> <u>153rd fl.</u> <u>154th fl.</u> <u>155th fl.</u> <u>156th fl.</u> <u>157th fl.</u> <u>158th fl.</u> <u>159th fl.</u> <u>160th fl.</u> <u>161st fl.</u> <u>162nd fl.</u> <u>163rd fl.</u> <u>164th fl.</u> <u>165th fl.</u> <u>166th fl.</u> <u>167th fl.</u> <u>168th fl.</u> <u>169th fl.</u> <u>170th fl.</u> <u>171st fl.</u> <u>172nd fl.</u> <u>173rd fl.</u> <u>174th fl.</u> <u>175th fl.</u> <u>176th fl.</u> <u>177th fl.</u> <u>178th fl.</u> <u>179th fl.</u> <u>180th fl.</u> <u>181st fl.</u> <u>182nd fl.</u> <u>183rd fl.</u> <u>184th fl.</u> <u>185th fl.</u> <u>186th fl.</u> <u>187th fl.</u> <u>188th fl.</u> <u>189th fl.</u> <u>190th fl.</u> <u>191st fl.</u> <u>192nd fl.</u> <u>193rd fl.</u> <u>194th fl.</u> <u>195th fl.</u> <u>196th fl.</u> <u>197th fl.</u> <u>198th fl.</u> <u>199th fl.</u> <u>200th fl.</u> <u>201st fl.</u> <u>202nd fl.</u> <u>203rd fl.</u> <u>204th fl.</u> <u>205th fl.</u> <u>206th fl.</u> <u>207th fl.</u> <u>208th fl.</u> <u>209th fl.</u> <u>210th fl.</u> <u>211st fl.</u> <u>212nd fl.</u> <u>213rd fl.</u> <u>214th fl.</u> <u>215th fl.</u> <u>216th fl.</u> <u>217th fl.</u> <u>218th fl.</u> <u>219th fl.</u> <u>220th fl.</u> <u>221st fl.</u> <u>222nd fl.</u> <u>223rd fl.</u> <u>224th fl.</u> <u>225th fl.</u> <u>226th fl.</u> <u>227th fl.</u> <u>228th fl.</u> <u>229th fl.</u> <u>230th fl</u>																			

37.00	10.00	2.0	220.00
10.00	23.00	1.0	30.00

No functional obsolescence was observed.

	Physical	Functional	Economic
Less Depreciation \$ 4,200.00			
Depreciated value of improvements			\$ 42,000.00
INDICATED LAND VALUE			\$ 1,278,400
(If feasible, show only feasible value)			\$ 60,000.00
INDICATED VALUE BY COST APPROACH			\$ 187,400

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	Union Valley Carmel	Croton Fall Rd Carmel	Croton Fall Rd Carmel	Greenlawn Ave Carmel
Proximity to Subd.		1.5 Miles	2 Miles	3 Miles
Sales Price	\$	\$150,000	\$150,000	\$150,000
Price/Living Area		\$ 64.26/sf	\$ 52.78/sf	\$ 75.00/sf
Date Source	Inspection	Public Records	Public Records	Public Records
Date of Sale and Line Adjustment	2/86 +1.000	11/85 +1.000	12/85 +1.000	12/85 +1.000
Location	Good	Good	Good	Good
Site/View	1/4 Acre	1/4 Acre	1/4 Acre	1/4 Acre
Design and Appeal	2-Bdrm/2-Bath	2-Bdrm/2-Bath	2-Bdrm/2-Bath	2-Bdrm/2-Bath
Quality of Const.	Excellent	Similar	Similar	Similar
Age	44	44	44	44
Condition	Excellent	Similar	Similar	Similar
Living Area Room Count and Total	Total 3 rms. 2 baths	Total 3 rms. 2 baths	Total 3 rms. 2 baths	Total 3 rms. 2 baths
Green/Living Area	0 2588 Sq. Ft.	0 2544 Sq. Ft.	0 2544 Sq. Ft.	0 2544 Sq. Ft.
Basement & Dens.	Full	Full	Full	Full
Finished Rooms	Unfinished	Unfinished	Unfinished	Unfinished
Functional Utility	Average	Similar	Similar	Similar
Air Conditioning	None	None	None	None
Garage/Car Port	3 Car	3 Car	2 Car	2 Car
Porch, Patio Pool, etc.	Front Porch Cottage	Front Porch 10 Pool	Patio	Deck 10 Pool
Repeater Sewer Efficient Floors	None	None	None	None
Other (e.g. fire place, kitchen equip., remodeling)	NO/FH Ref	NO/FH Ref	NO/FH Ref	NO/FH Ref
Notes or Financing Comments	Fireplace Conventional Financing	Fireplace Conventional Financing	Fireplace Conventional Financing	Fireplace Conventional Financing
Net adj. (Total)		\$18,000	\$0.000	\$3,000
Indicate Value of Subd.		\$170,000	\$150,000	\$153,000

Comments on Market Data: The distances of sales 1, 2 & 3 were expanded beyond the one mile range due to lack of sales similar to the subject within the required distance.

INDICATED VALUE BY MARKET DATA APPROACH: 170,500

INDICATED VALUE BY INCOME APPROACH

This appraisal is made ☒ "as is" ☐ additions to the existing allocations, or new filer's file as follows

Comments and Conditions of Acquisition: ☐ Appraisal based on Marshall and ☐ completed per above work specifications

File # & Cost data hard disk

Comments and Conditions of Appraisal

HRR 11001 does not include Preliminary 11102 Subdivision.

Final Reconciliation: The market data approach best reflects the attitudes of buyers and

Final Recommendation: ~~Today's marketplace is full of opportunities for the~~

കേരള കണ്ണടകൾ.

Construction Warranty ☐ Yes ☒ No Name of Warranty Program _____ Warranty Coverage Expires _____

This document is based on the above information. The construction documents and contract documents and related information shall be subject to the terms and conditions of the warranty program.

PHLMC Form 439 (Rev. 01/73)/PHLMC Form 439-1 (Rev. 05/70) Order with comment

ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF 2/74 THE 46 DAY 1850 1850

Approved: Ed. R. King

Appraiser(s) A. Richard Review Appraiser (if applicable) _____

001 P 000000 P 000 0000 000 C 01

[illegible]

USER NO. 79-00 GENERAL LEDGER HISTORY				ULSTER SAVINGS BANK		DATE 12-30-89 PAGE 1251 GLN020-01	
FROM 10-01-89 THRU 12-30-89							
ACCOUNT	DATE	BR TL TERM TC REF	DESCRIPTION	DEBITS	CREDITS	ACCOUNT BALANCE	
2180-001 ACC EXP FED INC TAXES	12-29-89	01 A1 0983 911 555	CONTINUED-----				
ACCOUNT TOTAL			ACCRUED 12/31	1,782,230.85	1,782,230.85	250,878.94	250,878.94
2180-002 NY STATE FRANCHISE TAX	10-31-89	01 A1 0983 911 555	*****BEGINNING BALANCE *****			151,382.03	151,382.03
	10-31-89	01 A1 0983 911 555	ACCRUAL TO DEFERRED 10/31		15,895.12	135,487.31	135,487.31
	10-31-89	01 A1 0983 911 555	APPL OF 1988 OVERPAY	108,255.00		23,232.31	23,232.31
	11-30-89	01 A1 0983 911 557	11-30 ACCRUAL		17,789.00	40,911.03	40,911.03
	12-03-89	01 A1 0983 911 557	ACCRUE REFEY TAX LATE	26,958.16		13,952.87	13,952.87
	12-15-89	01 A1 0983 911 557	4TH QUARTER DEF	170,000.00		83,952.87	83,952.87
	12-29-89	01 A1 0983 911 555	ACCRUED 12/31		85,222.46	2,509.11	2,509.11
ACCOUNT TOTAL			ACCRUED 2 REF 12/31	305,213.16	167,316.37	2,509.48	2,509.48
2180-003 ACC EXP MOI K CONTRIB	10-31-89	01 A1 0983 911 555	*****BEGINNING BALANCE *****			117,500.00	117,500.00
	11-30-89	01 A1 0983 911 557	ACC FOR 10/89		12,500.00	129,000.00	129,000.00
	12-22-89	01 A1 0983 911 557	ACCRUAL 11-30		12,500.00	141,500.00	141,500.00
	12-29-89	01 A1 0983 911 555	ADDITIONAL ACCRUAL		100,000.00	241,500.00	241,500.00
ACCOUNT TOTAL			MOI ACCRUED 12/89	.00	12,500.00	250,000.00	250,000.00
2180-005 ACC INT BORROWED FUNDS	10-31-89	01 A1 0983 911 555	*****BEGINNING BALANCE *****			.00	.00
ACCOUNT TOTAL				.00	.00	.00	.00
2180-006 ACC EXP PAYROL	10-02-89	01 A1 0984 921 555	*****BEGINNING BALANCE *****			120,000.00	120,000.00
	10-31-89	01 A1 0983 911 555	REVERSE 9/10 018 ACCRUAL	120,000.00		.00	.00
	11-30-89	01 A1 0983 911 557	BONUS ACC FOR 10/89		42,500.00	42,500.00	42,500.00
	12-29-89	01 A1 0983 911 555	BONUS ACCRUAL 11-30		42,500.00	85,000.00	85,000.00
ACCOUNT TOTAL			REV BONUS ACCR. 4 QTR.	85,000.00	85,000.00	.00	.00
2180-007 ACC EXP GRADIN FEB SAL	10-31-89	01 A1 0983 911 555	*****BEGINNING BALANCE *****			.00	.00
ACCOUNT TOTAL				.00	.00	.00	.00
GROUP TOTALS				59,235,314.21	59,580,794.55	2,822,081.82	2,822,081.82
2200-002 WINTERSET PROPERTIES	10-31-89	01 A1 0983 911 555	*****BEGINNING BALANCE *****			.00	.00
ACCOUNT TOTAL				.00	.00	.00	.00
2220-000 DEFERRED PROFIT LME	12-22-89	01 A1 0984 911 555	*****BEGINNING BALANCE *****			30,418.74	30,418.74
	12-22-89	01 A1 0983 911 555	PROPERTY		106,042.56	136,461.30	136,461.30
	12-29-89	01 A1 0984 911 555	CHANGE OVE N 12/89	1,130.86		135,330.44	135,330.44
ACCOUNT TOTAL			SALE TO BRISSETTE PROP.	1,130.86	107,173.34	144,209.58	144,209.58
2260-001 LEASING & DISC M.I.L.	10-11-89	01 A1 0984 921 555	*****BEGINNING BALANCE *****			112.97	112.97
	10-11-89	01 A1 0983 911 555	EARNINGS THRU 10/10	12.70		125.67	125.67
	11-12-89	01 A1 0983 911 555	EARNINGS THRU 10-11-89	6.29		131.96	131.96
	11-12-89	01 A1 0983 911 555	EARNINGS THRU 11-10	11.71		143.67	143.67
	12-11-89	01 A1 0983 911 555	EARNINGS THRU 11-15	4.94		148.61	148.61
	12-18-89	01 A1 0984 921 555	EARNINGS THRU 12-15-89	10.74		159.35	159.35
				4.12		163.47	163.47

Ulster Savings Bank

BOX 3337•280 WALL STREET•KINGSTON, NY 12401
914 338-6060

February 5, 1985

Mr. and Mrs. Robert Bay
143 A Union Valley Road
Mahopac, New York 10541

Re: Rental Due on Premises Now
Owned by Ulster Savings Bank

Dear Mr. and Mrs. Bay:

Mr. Ronder, attorney for Ulster Savings Bank, has advised me that as of a recent conversation, he has requested on behalf of Ulster Savings Bank that you send to the bank the monthly rental on the premises you occupy that has now been acquired by Ulster Savings Bank by reason of foreclosure against A. Laraine Dimery the former owner. The prior understanding with Mrs. Dimery is terminated by reason of the foreclosure. However, the bank is willing to permit you to remain on the premises on a month to month basis until written notice by either party as to a termination of the arrangement. The monthly rental is \$950.00 with you paying your own utilities, heat and water. The bank will pay the real estate taxes and will maintain its own fire insurance policy on the structure. We suggest you maintain your own insurance on your contents.

We understand that your prior lease had an option to purchase which, as noted above, is of no legal force and effect. The bank would be pleased to talk with you if you are desirous of purchasing the property. If you are not interested in purchasing the property, this is to advise you

that it is currently the bank's intention to effectuate a sale of the same in the near future.

The foreclosure took place on December 18, 1984. Therefore, using the 18th of each month as a monthly anniversary date, we look forward to receipt of \$2,850.00 from you on or before February 18, 1985 with an additional \$950.00 the 18th of each month thereafter. Because of your present satisfactory occupation of the premises, we are not requesting any security from you at this time. However, we do reserve the right to alter that provision as well as the provision for rent and any other provisions of this understanding on 30 days written notice.

If you have any security with Mrs. Dimery, we suggest that you contact her for the refund of same. If you have any questions concerning this matter, please contact me immediately.

Very truly yours,
ULSTER SAVINGS BANK

By /s/ John F. Schussler
JOHN F. SCHUSSLER
Loan Servicing Officer

/pab

Ulster Savings Bank

BOX 3337•280 WALL STREET•KINGSTON, NY 12401
914 338-6060

February 6, 1985

Mr. and Mrs. Michael Porcelli
143 B Union Valley Road
Mahopac, New York 10541

Re: Rental Due on Premises Now
Owned by Ulster Savings Bank

Dear Mr. and Mrs. Porcelli:

Mr. Ronder, attorney for Ulster Savings Bank, has advised me that as of a recent conversation, he has requested on behalf of Ulster Savings Bank that you send to the bank the monthly rental on the premises you occupy that has now been acquired by Ulster Savings Bank by reason of foreclosure against A. Laraine Dimery the former owner. The prior understanding with Mrs. Dimery is terminated by reason of the foreclosure. However, the bank is willing to permit you to remain on the premises on a month to month basis until written notice by either party as to a termination of the arrangement. The monthly rental is \$425.00 with you paying your own utilities, heat and water. The bank will pay the real estate taxes and will maintain its own fire insurance policy on the structure. We suggest you maintain your own insurance on your contents.

The foreclosure took place on December 18, 1984. Therefore, using the 18th of each month as a monthly anniversary date, we look forward to receipt of \$1,275.00 from you on or before February 18, 1985 with an additional \$425.00 the 18th of each month thereafter. Because of your present satisfactory occupation of the premises, we

are not requesting any security from you at this time. However, we do reserve the right to alter that provision as well as the provision for rent and any other provisions of this understanding on 30 days written notice.

If you have any security with Mrs. Dimery, we suggest that you contact her for the refund of same. If you have any questions concerning this matter, please contact me immediately.

Very truly yours,

/s/ John F. Schussler
JOHN F. SCHUSSLER
Loan Servicing Officer

JFS/mjr

The POLICY PERIOD shall begin and end, at the
Location of Property involved, as indicated below
(See reverse side for additional policy provisions).

ALLSTATE INSURANCE COMPANY

DECLARATIONS

MEMORANDUM COPY

ISSUED 01-25-94

0 33 738777 11/05

BEGINS ON NOV 5, 1993

ENDS ON NOV 5, 1994

AMENDED - JAN 25, 1994

A LARAINÉ DIMERY

12 01 A.M. STANDARD TIME

BOX 338 SO LAKE BLVD

MAHOPAC FALLS NY 10542-0338

**DWELLING IS OF FRAME CONSTRUCTION AND
OCCUPIED BY 1 FAMILY**

Name and

**Address CLERK OF SUPREME COURT COUNTY OF
of First PUTNAM**

**Mortgagee 40 GLENEIDA AVE
CARMEL NY 10512-1703**

The following coverages and limits of liability apply as
shown below. If the word "amended" followed by a date
appears above, the insurance applies only from that date.

POLICY COVERAGES AND LIMITS OF LIABILITY

A DWELLING PROTECTION

(REPLACEMENT GUARANTEE) \$356,044

**10% ADDITIONAL PROTECTION PROVIDED
FOR OTHER STRUCTURES**

C PERSONAL PROPERTY PROTECTION

REPLACEMENT COST 249,231

**LOSS OF USE OF ACTUAL LOSS SUSTAINED
YOUR RESIDENCE**

**X FAMILY LIABILITY EACH OCCURRENCE
100,000**

Y	GUEST MEDICAL	EACH PERSON
	PAYMENTS	1,000
WB	WATER BACK-UP	500
WC	WORKERS' COMPENSATION	
	PRIVATE RESIDENCE EMPLOYEE(S)	
	INCLUDED IN TOTAL	
	OCCASIONAL CLASS	
	POLICY PREMIUM	

THE PROPERTY INSURANCE ADJUSTMENT CONDITION APPLIES USING THE BOECKH PUBLICATIONS BUILDING COST INDEX DEVELOPED BY THE AMERICAN APPRAISAL ASSOCIATES, INC.

LOSS DEDUCTIBLE(S) APPLICABLE
 \$1000 ALL PERIL DEDUCTIBLE APPLIES TO
 COVERAGE(S) A & C
 \$250 WATER BACK-UP DEDUCTIBLE APPLIES
 SUBJECT TO THE FOLLOWING FORMS
 AND ENDORSEMENTS

AU2069 DELUXE HOMEOWNERS POLICY
 AU9616-3 AMENDATORY ENDORSEMENT
 AU1599-2 WATER BACK-UP ENDORSEMENT
 AU233-1 DECLARATIONS SUPPLEMENT PAGE
 AU1558-1 AMENDATORY ENDORSEMENT

POLICY DOCUMENTS

- Deluxe Policy form AP316	- New York Amendatory
- Amendment of Policy	Endorsement form
Provisions form AP521	AP497-1
- Bldg. Struct. Reimb. Ext.	- New York Water Back-
Limits End. form AP693	Up Endorsement form
- Declarations Supplement	AP545
Pg (New York) form AU233-1	

MORTGAGEE(S)	- Workers Comp/Employer Liability End. form AU1558-1
FIRST: CLERK OF SUPREME COURT COUNTY OF PUTNAM 40 Gleneida Ave Carmel NY 10512-1703	
MESSAGE(S)	
Do not pay. Insured has been billed	
OFFICE USE SPACE	
MORTGAGEE SHORT CODE # [PUTNAM COUNTY CLERK'S OFFICE Oct 1 SEP 31 9 44 AM '99]	

CODE OF THE TOWN OF CARMEL

CHAPTER 50

SUBDIVISION OF LAND

Section 276 of Town Law authorizes the Planning Board to review and approve or disapprove plats for subdivisions within the Town.

The rules governing this process are known as "Subdivision Regulations of the Town of Carmel, Putnam County, New York."

The purpose of these Regulations is to insure that "all land will be subdivided in accordance with sound regulations and in accordance with a comprehensive plan.

As APPLICANT (THE person . . . who shall lay out, for the purpose of sale or development any subdivision or part thereof),

on September 11, 1984, I filled out and signed the Preliminary Layout Application Form for Subdivision of Land, which was submitted to the Town of Carmel Planning Board by Laurent and Clark, along with a Sketch Plan for a Lot Count of 12.

On September 19, 1984, the proposed subdivision PINE MANOR was listed on the agenda of the Town of Carmel Planning Board Meeting.

On August 25, 1987, Mrs. Peggy Moore, Planning Board Secretary, provided ONE COPY EACH of filed Map # 2252 (Pine Manor-Section I-TM 145-6-2 Union Valley Road - A/K/A DIMERY) to TOWN CLERK, BUILDING INSPECTOR, ASSESSOR.

On October 1, 1987, Mrs. Peggy Moore, Planning Board Secretary, provided The MYLAR of the overall Pine Manor Subdivision (unsigned, OWNER A.L. Dimery) to the TOWN CLERK to be kept on permanent file. Mrs. Moore advised the TOWN Clerk that the MYLAR for Section I and Section II "is signed" and on file in the County Clerk's Office.

On November 23, 1987, Mrs. Peggy Moore, Planning Board Secretary, provided ONE COPY EACH of the Pine Manor Subdivision Map on file in the County Clerk's Office as Map # 2252A to TOWN CLERK, BUILDING INSPECTOR, ASSESSOR. (OWNER A.L. DIMERY)

On April 6, 1988, the Town Engineer, George Burgess, P.E. notified the Town Planning Board that he had no objections to the approval of a revised Pine Manor Subdivision Map dated January 22, 1988, prepared by Richard H. Gorr. (OWNER A.L. DIMERY)

On June 10, 1988, Christopher Wright served a copy of the Map of Pine Manor (OWNER, A.L. DIMERY) to the Chairman Board of Assessor's, Town of Carmel, by "depositing . . . a copy of same securely in a post paid wrapper in the Post Office maintained by the U.S. Government at Mahopac addressed to Bob Gilmore, Chairman, Board of Assessors." (File Date, June 10, 1988)

On July 8, 1988 Mrs. Peggy Moore, Planning Board Secretary, provided ONE COPY EACH of the Subdivision Map, Pine Manor, filed in the County Clerk's Office as Map # 2252B (OWNER, A.L. DIMERY) to TOWN CLERK, BUILDING INSPECTOR, ASSESSOR.

RANDOLPH W. LAURENT, P.E.
HARRY W. NICHOLS JR., P.E.

ASSOCIATES, P.C.
73 FAIRFIELD DRIVE
PATTERSON, NEW YORK 12563
914-278-6108
CONSULTING SITE
ENGINEERS

June 4, 1987

Town of Carmel Environmental Conservation Board
Town Hall
McAlpin Avenue
Mahopac, NY 10541

Att: Mr. Charles Hill, Jr., Chairman

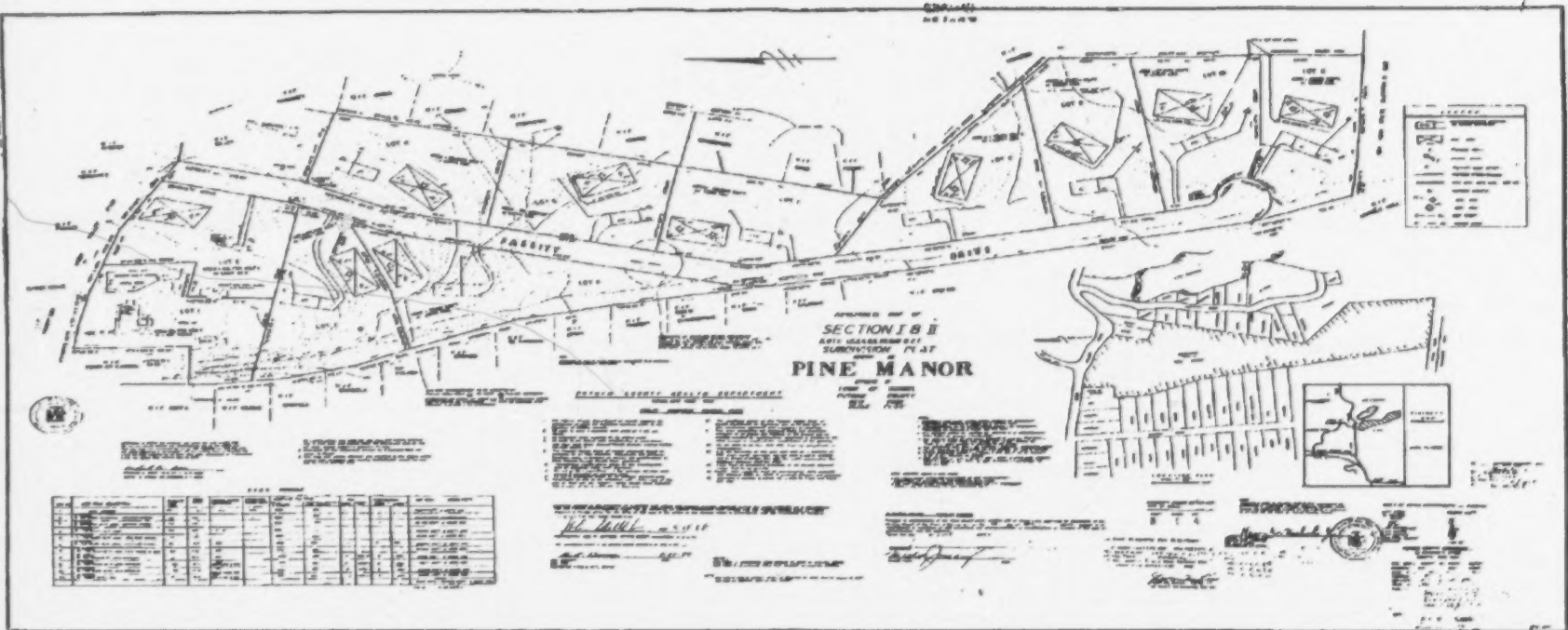
Re: Pine Manor Residential Subdivision - 11 Lots
Union Valley Road
Town of Carmel, New York

Dear Mr. Hill:

We are herewith submitting the following documents regarding the entire project (Sections I & II):

1. Four (4) copies of Application (original submitted 3-5-87);
2. Five (5) copies of the following drawings:
P-1 "Site Layout, Grading & Utilities Plan",
rev. 5-26-87;
P-2 "Details & Profiles", rev. 1-13-87;
P-3 "Profiles & Details", rev. 1-13-87.
3. "Type and extent of work" (item No. 7, p.2) attached to the applications;
4. Deed (Liber 787 Pages 1164-1167) dated 14 December 1982 (item No. 11, p.2) attached to the applications;

REF NO.	DATE	BP	TL	TERM	TO	REF	DESCRIPTION	DEBITS	CREDITS	ACCOUNT	BALANCE
GENERAL LEDGER HISTORY	FROM 01-01-88	THRU 12-31-88	ULSTER SAVINGS BANK	DATE 1-31-89	PAGE 4635	GLNG20-01					
1-11-88	01	AT	1930	911	325		INT TO 2-1-88		4,467.36	4,467.36	
8-02-88	01	AT	1931	911	423		INT. TO 8-1-88		4,510.52	8,977.88	
ACCOUNT TOTALS								.00	8,977.88	8,977.88	
3-20-00	00	INCOME	01-EP				*****BEGINNING BALANCE *****		.00	.00	
7-21-88	01	AT	1913	911	08		C/A 361422522 SP		.01	.01	
10-31-88	01	AT	1905	900	083		YESSIER CONST LOT 3		4.13	4.13	
ACCOUNT TOTALS								.00	4.13	4.13	
3080-001	00	INCOME	O.R.C.				*****BEGINNING BALANCE *****		.00	.00	
1-20-88	01	AT	1931	911	355		INT LOAN BLNPS		8,716.40	8,716.40	
1-27-88	01	AT	1930	911	356		CRESPIE		73.55	8,789.95	
2-17-88	01	AT	1931	911	356		CRESPIE		71.33	8,861.28	
3-30-88	01	AT	1931	911	356		RIVERM		62.42	8,923.70	
4-11-88	01	AT	1916	900	080		JIT CONTRA OPS INTEREST		1,416.81	10,340.51	
5-04-88	01	AT	1930	911	355		CRESPIE JAN/JUN 1985		66.82	10,407.33	
6-18-88	01	AT	1930	911	355		INT INCOME LAND DEVEL		2,249.52	12,656.85	
5-24-88	01	AT	1931	921	356		CRESPIE NOV	66.82		12,723.67	
4-02-88	01	AT	1930	911	355		CRESPIE INT PD TO 5-1-88		129.29	12,852.96	
6-13-88	01	AT	1902	311	018		INT DEV LOAN HYDE PARK		4,400.54	17,253.50	
7-11-88	01	AT	1930	911	356		INT INCOME (MIDN VALLEY)		9,632.81	26,886.31	
8-11-88	01	AT	1930	911	356		CRESPIE 6-1-88 PAYMNT		62.26	26,948.57	
8-16-88	01	AT	1916	900	080		INTEREST DUE JUNE/JULY		14,665.15	41,613.72	
8-24-88	01	AT	1931	911	355		12MS CRESPIE		57.65	41,671.37	
8-29-88	01	AT	1930	921	356		CRESPIE 12MS NOV	57.65		41,729.02	
9-14-88	01	AT	1931	911	356		CRESPIE INT PAYMNT		5,069.39	46,798.41	
9-26-88	01	AT	1930	911	356		INT DUE FROM 7-1-88 TO SE		436.09	47,234.50	
10-24-88	01	AT	1930	911	356		INT DUE 9-23 TO 9-30 BLNPS		25.32	47,259.82	
10-31-88	01	AT	1908	900	083		12MS INT PAYMNT 2-1-88		2,330.11	49,589.93	
11-15-88	01	AT	1931	911	355		CRESPIE 12MS INT PAYT		51.21	49,641.14	
11-15-88	01	AT	1931	911	355		CRESPIE 12MS INT PAYT		50.49	49,691.63	
ACCOUNT TOTALS							DIRECT FINE PARKOR AND INT	124.47	10,946.82	60,638.45	
GROUP TOTALS *****								13,584,142.58	41,520,618.83	27,936,476.25	
TOTAL INCOME *****								13,584,142.58	41,520,618.83	27,936,476.25	



5. "List of property owners within 500 feet of proposed Pine Manor Subdivision" (item No. 12, p.2) attached to the application.
6. Five (5) copies of Carmel ECB Minutes dated August 1, 1985 indicating that the drainage course through Lot No. 5 "be channelized into the existing channel." This document was requested at the May 7 meeting.

Upon determination by the Board of the required fees, we will forward a check in that amount immediately.

We trust the enclosed is complete and satisfactory.

Sincerely,
LAURENT ENGINEERING
ASSOCIATES, P.C.

/s/ Dick
Richard S. Clark
/map

bcc: A.L. Dimery w/ 1 copy each
/ H.C. St. John w/1 copy each

787 1164

CONSULT YOUR LAWYER BEFORE SIGNING THIS
INSTRUMENT - THIS INSTRUMENT SHOULD BE
USED BY LAWYERS ONLY

THIS INDENTURE, made the 14th day of December,
nineteen hundred and eighty-two BETWEEN

VINCENT ROBERTO and ALICE ROBERTO,
husband and wife Union Valley Road, Mahopac, NY

party of the first part and ALICE D. [LARAINÉ] DIMERY, 645 Madison Avenue, New York, NY

party of the second part,

WITNESSETH, that the party of the first part, in consideration of TEN AND NO/100 (\$10.00)-----dollars, lawful money of the United States, and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Carmel in the County of Putnam and State of New York and being more particularly bounded and described as follows:

[PARCEL I]:

BEGINNING at a point on the southerly side of Teakettle Spout Road at the division line between Lands herein being described and lands of the New York Central Railroad Company (Putnam Division) Mahopac Section; running thence along said southerly side of Teakettle Spout Road the following courses and distances: S 79° 53' 20" E 52.40 feet, S 75° 11' 10" E, 90.43 feet; S 69° 03' 40" E 145.81 feet and S 55° 23' 40" E 186.01 feet to lands now or formerly of Louis J. and Theresa Miller and a stone wall; running thence along said lands now or formerly of Louis J. and Theresa Miller and a stone wall, S 13° 06' 10" W 230.88 feet and S 71° 26' 40" E 167.12 feet to lands now or formerly of Harry Fleisher and David Schlossberg and a stone wall; running thence along said above mentioned lands and a stone wall the following courses and distances: S 12° 55' 15" W 58.14 feet; S 11° 46' 30" W 100.02 feet; S

12° 13' 00" W 810.48 feet, S 48° 43' 31" E 62.54 feet; S 46° 15' 47" E 100.05 feet; S 47° 38' 14" E 100.00 feet; S 48° 28' 46" E 120.15 feet; S 46° 46' 57" E 49.35 feet; S 0° 07' 40" W 260.77 feet; S 1° 29' 50" E 104.10 feet; S 0° 19' 10" W 201.89 feet to a point and another stone wall; running thence along said stone wall, N 86° 13' 10" W 250.74 feet to lands of said New York Central Railroad Company (Putnam Division) Mahopac Section and a stone wall; running thence along said railroad lands and stone wall the following courses and distances: N 18° 53' 10" W 74.48 feet; N 16° 18' 20" W 207.37 feet; N 8° 55' 10" W 593.44 feet; N 8° 14' 30" W 335.10 feet; N 9° 22' 10" W 299.05 feet; N 18° 29' 00" W 374.92 feet; N 1° 44' 00" W 355.04 feet and N 1° 09' 30" E 63.36 feet to the point or place of beginning.

SUBJECT to covenants, conditions, restrictions, easements, and rights of way of public utilities of record, if any. SUBJECT ALSO to mining and mineral rights of the heirs of Phillipse. BEING the same premises conveyed by Harry M. Levy and Sylvia K. Levy to Vincent Roberto and Alice Roberto [the Grantors herein /s/ VR, AR] by deed dated February 5, 1960, and recorded February 10, 1960 in Liber 527 of Deeds at Page 203 in the Putnam County Clerk's Office.

[PARCEL II:]

ALSO ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Carmel, County of Putnam and State of New York, as being more particularly bounded and described as follows:

BEGINNING at a point being the Northeasterly corner of the premises hereinafter described, said point of beginning the point of intersection of the division line between

hereinafter described premises with lands now or formerly of Vincent and Alice Roberto. Said point being further described as being the following courses and distances from the Southerly side of Teakettle Spout Road also known as Union Valley Road, to wit;

§ 1° 09' 30" W 63.36 feet and S 1° 44' 00" E 136.64 feet; Thence from said point of beginning following courses and distances: S 1° 44' 00" E 218.41 feet, S 18° 29' 00" E 374.92 feet, S 9° 22' 10" E 299.05 feet, S 8° 14' 30" E 335.10 feet, S 8° 55' 10" E 593.44 feet, S 16° 18' 20" E 207.37 feet, and S 18° 53' 10" E 74.48 feet to a point in other lands nor on formerly of Lincoln Hall. Thence along said lands on a course N 83° 03' 23" W 72.72 feet to a point and lands now or formerly of Raffa. Thence along said lands now or formerly of Raffa on a course N 17° 36' 07" W 193.42 feet, N 9° 30' 36" W 643.09 feet and finally N 7° 23' 34" W 100.48 feet to a point and lands shown on Map No. 1 of Country Line Acres, being filed Map No. 370 in the Office of the Clerk, County of Putnam. Thence along said lands following courses and distances: N 9° 08' 30" W 108.28 feet, N 8° 13' 50" W 292.30 feet, N 10° 57' 10" W 162.41 feet, N 17° 26' 20" W 100.04 feet, N 20° 48' 50" W 100.05 feet, N 23° 02' 40" W 100.25 feet, N 13° 04' 20" W 125.27 feet, N 5° 34' 20" W 128.44 feet, N 0° 08' 08" W 45.80 feet to a point and lands now or formerly of the Town of Carmel. Thence along said lands on a course S 87° 55' 10" E, a distance of 88.98 feet to a point and place of BEGINNING.

SUBJECT to covenants, conditions, restrictions, easements and rights of way of public utilities of record. SUBJECT ALSO to mining and mineral rights of the heirs of Phillipse.

BEING the same premises conveyed by Lincoln Hall to Vincent Roberto and Alice Roberto [THE GRANTORS HEREIN /s/ VR, AR] by deed dated October 4, 1979 and recorded October 19, 1979, in Liber 765 of Deeds at Page 214 in the Putnam County Clerk's Office.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:
/s/ Mitchell Rabino

/s/ Vincent Roberto
VINCENT ROBERTO

/s/ Alice Roberto
ALICE ROBERTO

STATE OF NEW YORK, COUNTY OF DUTCHESS SS:

On the 14th day of December 1982, before me personally came VINCENT ROBERTO and ALICE ROBERTO to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they executed the same.

/s/ Gale Foster
Notary Public

GALE FOSTER

Notary Public, State of New York
Resident in and for Ulster County
Commission Expires March 30, 1983

STATE OF NEW YORK, COUNTY OF SS:

On the of 19 , before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No. ; that he is the of , the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed h name thereto by like order.

STATE OF NEW YORK, COUNTY OF

SS:

On the day of 19 , before me personally came to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that they executed the same.

STATE OF NEW YORK, COUNTY OF

SS:

On the day of 19 , before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, beginb by me duly sworn, did depose and say that he resides at No.

that he knows

to be the individual described in and who esxecuted the foregoing instrument; that he, said subscribing witness, was present and saw execute teh same; and that he said witness, at the same time subscribed h name as witness therto.

Bargain and Sal: Deed	Section	145	146	147
WITH COVENANT AGAINST	Block	6	1	5
GRANTOR'S ACTS	Lot	2	27	3
TITLE NO. 82-40-10045 (13)	County or	Town of Carmel		
Vincent Roberto and	Town	County of Putnam		
Alice Roberto				

TO

A. Laraine Dimery

RETURN BY MAIL TO:

Recorded By:
USLIFE TITLE INSURANCE
 Company of New York
 235 Main Street
 White Plains, New York 10601

Kantor, Davidoff, Winston &
 Wolfe, Esq.
 200 Park Ave.
 New York, NY Zip No. 10016

App. 118

* Tax Billing Address.
645 Madison Ave.
New York, NY

*Reserve this space for
use of Recording Office.*

0995

Received
\$143.00
REAL ESTATE
Jan 04 1983
Transfer
Putnam County

787 1167

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

----- x

In the Matter of the Application
for an Order Appointing a Special
District Attorney pursuant to
Section 701 of the County Law
to Investigate a Complaint of
Conspiracy to Defraud by
ALICE LARAINÉ DIMERY
and to prosecute Any and All
Charges Arising as a Result
of that Investigation

AMENDED ORDER

----- x

WHEREAS, KEVIN L. WRIGHT, District Attorney of Putnam County, made application for an Order appointing a Special District Attorney pursuant to section 701 of the County law to act in the above matter, and

WHEREAS, the undersigned by Order dated March 19, 2001 appointed Pat Bonanno, Esq. as Special District Attorney, and thereafter by Order dated January 24, 2003 appointed Vincent Gelardi, Esq. as Special District Attorney, and

WHEREAS, Vincent Gelardi, Esq. has made an application to be relieved, it is hereby

ORDERED, that Vincent Gelardi, Esq. is hereby relieved as Special District Attorney in the above matter, and it is further

ORDERED, that Stephen R. Lewis, Esq., having an office at 175 Main Street, White Plains, New York 10601 is hereby appointed as Special District Attorney for all

purposes including disposition. As Special District Attorney, Stephen R. Lewis, Esq. shall possess all powers and discharge the duties of the District Attorney during the period for which he is appointed and shall act in place and stead of the District Attorney, and it is further

ORDERED, that the Board of Supervisors of Putnam County shall pay the reasonable compensation for the services of Stephen R. Lewis, Esq. which shall be in the sum of \$150.00 per hour, together with additional sums for necessary disbursements relating to the investigation and prosecution of this matter.

/s/ Francis A. Nicolai
FRANCIS A. NICOLAI
Administrative Judge
Ninth Judicial District

Dated: White Plains, New York
October 14, 2003

Hon. Kevin L. Wright
Putnam County District Attorney
40 Gleneida Avenue
Carmel, New York 10512

Carl Lodes, Esq.
Putnam County Attorney
40 Gleneida Avenue
Carmel, New York 10512

Leonard Pace
Putnam Supreme and County Courts
40 Gleneida Avenue
Carmel, New York 10512

Vincent Gelardi, Esq.
2975 Westchester Avenue, Suite 207
Purchase, New York 10577

U.S. Department of Housing and Urban Development

A. Settlement Statement

OMB No. 2502-0265

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins. 6. File Number 7. Loan Number 16-035426-6 8. Mortgage Insurance Case Number

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower
Daniel Moloney

340 East 73rd Street #2E
New York, NY 10021

G. Property Location
Union Valley Road
Putnam County, NY 10512

E. Name and Address of Seller
Ulster Savings Bank a New York
Banking Corporation
Union Valley Road
Carmel, NY 10512

F. Name and Address of Lender
Ulster Savings Bank
UPO Box 3337
Kingston, NY 12401

H. Settlement Agent
Howard C. St. John and Associates
Place of Settlement
Kingston, NY

I. Settlement Date
12/13/89

J. Summary of Borrower's Transaction

100. Gross Amount Due From Borrower
101. Contract sales price 229000.00
102. Personal property
103. Settlement charges to borrower (line 1400)
104.
105.

Adjustments for items paid by seller in advance

106. City/town taxes to
107. County taxes to 48.69
108. Assessments to
109. Sch tax 1302.56
110.
111.
112.

120. Gross Amount Due From Borrower

200. Amounts Paid By Or In Behalf Of Borrower
201. Deposit or earnest money
202. Principal amount of new loan(s) 183,200.00
203. Existing loan(s) taken subject to
204.
205.
206.
207.
208.
209.

Adjustments for items unpaid by seller

210. City/town taxes to
211. County taxes to
212. Assessments to
213.
214.
215.
216.
217.
218.
219.

220. Total Paid By/For Borrower

Cash At Settlement From/To Borrower

Gross Amount due from borrower (line 120)
Less amounts paid by/for borrower (line 220) ()

Cash ☐ From ☐ To Borrower

K. Summary of Seller's Transaction

400. Gross Amount Due To Seller
401. Contract sales price 229000.00
402. Personal property
403.
404.
405.

Adjustments for items paid by seller in advance

406. City/town taxes to
407. County taxes to 48.69
408. Assessments to
409. Sch tax 1302.56
410.
411.
412. 1351.25

420. Gross Amount Due To Seller

500. Reductions in Amount Due To Seller
501. Excess deposit (see instructions)
502. Settlement charges to seller (line 1400)
503. Existing loan(s) taken subject to
504. Payoff of first mortgage loan
505. Payoff of second mortgage loan
506.
507.
508.
509.

Adjustments for items unpaid by seller

510. City/town taxes to
511. County taxes to
512. Assessments to
513.
514.
515.
516.
517.
518.
519.

520. Total Reduction Amount Due Seller

600. Cash At Settlement To/From Seller

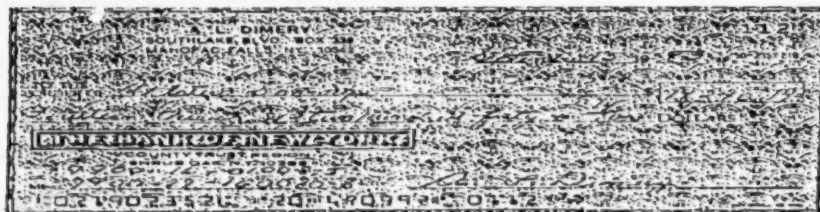
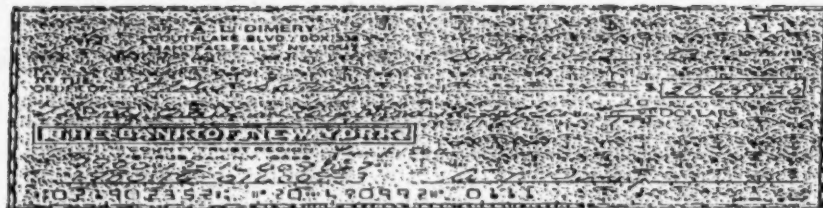
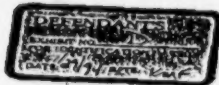
Gross amount due to seller (line 420)
602. Less reductions in amt. due seller (line 520) ()

603. Cash ☐ To ☐ From Seller

App 119

/s/ Daniel Moloney by [illegible]
Attorney in Fact.
BORROWER(S)

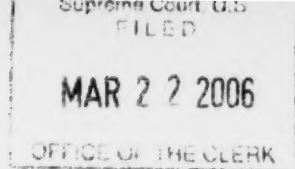
SELLER(S)



Stephen R. Lewis, Esq.
Stephens, Baroni, Reilly & Lewis, LLP
Northcourt Building
175 Main Street
White Plains, New York 10601

Richard H. Abelson, Esq.
30 Glenn Street
White Plains, New York 10603

(2)



No. 05-1063

IN THE
Supreme Court of the United States

ALICE LARAINÉ DIMERY,

Petitioner,

v.

ULSTER SAVINGS BANK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEW YORK,
APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

BRIEF IN OPPOSITION

JOEL B. HARRIS
Counsel of Record
JOHN P. DOHERTY
NEIL T. BLOOMFIELD
THACHER PROFFITT & WOOD LLP
Two World Financial Center
New York, New York 10281
(212) 912-7400

Attorneys for Respondent

200256



COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

COUNTER-STATEMENT OF ISSUES PRESENTED

1. Is a garden-variety real estate dispute decided under state law entitled to review by this Court?
2. Can a Petitioner "create" a basis for review by repackaging state law claims as Constitutional issues and by misrepresenting a New York Court's decision?

RULE 29(6) STATEMENT

Ulster Savings Bank is a banking corporation organized and existing under the laws of the State of New York as a mutual savings bank. Ulster Savings Bank has five subsidiaries, which are Robert J. Ryan, Inc., Ryan Associates of the Hudson Valley, Inc., Ulban of New York, Inc., USB Agency, Inc. and Ulster Home Mortgage, Inc. Ulster Savings Bank does not have a parent company and no publicly held company owns ten percent or more of its stock.

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OPINIONS BELOW

The October 26, 2000 Judgment of the Supreme Court of the State of New York, County of Putnam (Index No. 230-93), from which Petitioner's appeal was taken, dismissing Petitioner's Complaint and granting Respondent's counterclaim is unreported. (The May 19, 2000 Decision and Order of the Supreme Court of the State of New York, County of Putnam, which adjudicated the parties' several legal claims, is also unreported).

The December 27, 2004 Decision and Order of the Supreme Court of the State of New York, Appellate Division, Second Department, denying Petitioner's appeal is reported at 13 A.D.3d 574, 789 N.Y.S.2d 159 (2d Dep't 2004).

The Supreme Court of the State of New York, Appellate Division, Second Department's March 28, 2005 Decision denying Petitioner's motion to reargue, resettle and amend its Decision and Order or, in the alternative, for leave to appeal (Docket No.: 2000-10282) is unreported.

The New York State Court of Appeals' July 6, 2005 Decision denying Petitioner's motion for leave to appeal (Motion No.: 527) is unreported.

The Court of Appeals November 17, 2005 Decision denying Petitioner's Motion to Reargue for Leave to Appeal— (Motion No.: 871) is also unreported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). As explained in detail below, however, neither of Petitioner's purported questions presented were properly presented to or specifically decided by the New York appellate courts and, as a result, this Court lacks jurisdiction to adjudicate Petitioner's Questions Presented. *See, e.g., Illinois v. Gates*, 462 U.S. 213, 218 n.1, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983); *see also* Sup. Ct. R. 14(g)(i).

STATEMENT OF THE CASE

This New York real property dispute is not reviewable by the United States Supreme Court because it does not give rise to any federal or Constitutional questions. This case centers around a 1985 written agreement between the parties to develop and sell 19 acres of real property (eleven modest building lots) in Putnam County, New York. The parties envisioned that the eleven lots would be sold within 6 months, at significant profits; instead, the sales took 6 years and, halfway through in 1987, the real estate market tanked. In fifteen years of ensuing litigation, the main issues were: (1) whether the parties' agreement created a joint venture or reinstated the parties' prior mortgagor-mortgagee relationship; (2) whether Respondent engaged in multiple sales of the eleven subdivided parcels and, as such, whether Respondent properly accounted for joint venture proceeds; and (3) how to account properly for the relevant real estate transactions given the particular circumstances of each sale (e.g. option contract, associated building loans, etc.). In sum, the trial court held, and the Appellate Division unanimously affirmed, applying relevant New York precedents, that the

parties' agreement created a joint venture, that the joint venture was unprofitable, and that Petitioner failed to produce any evidence to support her fraud claims.

In a subsequent appeal to the New York State Court of Appeals, Petitioner wholly refashioned her claims – into alleged Constitutional deprivations and supposedly novel issues of public importance. The Court of Appeals denied Petitioner's motion for leave to appeal and her subsequent motion for reargument. Now, Petitioner again recasts this real property dispute into strained Constitutional and banking regulatory claims. None of these issues is appropriate for review or was adjudicated below and, quite frankly, several of them are based on fabrications of the record. The Court should deny Petitioner's writ.

COUNTER-STATEMENT OF FACTS

In 1985, Petitioner, an Ivy League-educated real estate developer, entered into a joint venture with Respondent, a small regional savings bank, to develop and sell 19 acres of real property. The parties' agreement, their joint venture, and the nature of their disputes are best understood chronologically.

I. 1982-1984: PETITIONER BORROWS MONEY FROM RESPONDENT TO REFINANCE A HOUSE AND PURCHASE PROPERTY, AND THEN IMMEDIATELY DEFAULTS

The parties' relationship began in December 1982, when Petitioner borrowed \$281,200 from Respondent, secured by four mortgages, to refinance a house on South Lake Boulevard in Putnam County, New York (the "Lake

Property") and to purchase another 19 acres in Putnam County for development (the "Development Property"). R. 1798-1843.

Petitioner never made a single payment to Respondent in connection with the four mortgages. *See* Petitioner's App. at 57-58. In June 1983, Respondent commenced foreclosure proceedings ("Foreclosure Proceedings"). In December 1984, the Foreclosure Proceedings were completed and Respondent obtained title to the Lake and Development Properties. R. 1853-1857, 2087-2215. At that point, Petitioner no longer had title to the Lake Property where she lived, or the Development Property or any financial obligations to Respondent – her two loans were extinguished as a result of the foreclosures. R. 228, 2087-2215.

II. 1985: PETITIONER AND RESPONDENT ENTER INTO THE AGREEMENT

A. December 1984 - March 1985: Petitioner Approached Respondent to Enter Into a Business Venture and the Parties Negotiate the Agreement

1. *Petitioner's Proposal to Respondent*

In late December 1984, Petitioner approached Respondent with a proposal for a business deal to develop and sell the Development Property. Petitioner's App. at 71; R. 223-225, 489-490.

Petitioner proposed a short-term business arrangement to allow her to complete the development and sale of the Development Property and thereby earn a sufficient profit to enable her to purchase the Lake Property from Respondent

("Joint Venture"). R. 491, 1789-1797. Petitioner represented that she had real estate expertise, was a licensed broker in New York, had been working for the past year to develop the Development Parcel, and that the process would be completed in four to six months. Petitioner's App. at 56, 59-60; R. 224-225, 229-230, 1028. In total, Petitioner and Respondent had four face-to-face meetings, and numerous telephone conversations, to negotiate the deal over the course of several months. R. 226, 490-492, 1789-1797. The Agreement was signed on March 1, 1985. Petitioner's App. at 58; R. 225, 964, 1789-1797.

2. *The Strong Real Estate Market in Late 1984 and Early 1985*

As the Trial Judge found, in late 1984 and early 1985 the New York real estate market was "very favorable." Petitioner's App. at 63. As such, the parties were "encouraged" that they could earn top dollar for the Development Property. *Id.*; 1789-1797. The Trial Court concluded that had the development proceeded on Petitioner's original five-month time frame, the parties "probably could or would have generated the profit [Petitioner and Respondent] foresaw on March 1, 1985 and sought to achieve." Petitioner's App. at 63.

B. The Terms of the Agreement

In accord with Petitioner's proposal, the Agreement basically provided that the parties would work together to develop and sell the Development Property within five months and, in the meanwhile, Petitioner could remain in the Lake Property house, which Respondent would refrain from selling. R. 1789-1797. During the venture, Petitioner

agreed to pay rent for the Lake Property but, the parties understood that Petitioner would not actually pay this rental charge. Instead, it would be charged against the Joint Venture. Respondent agreed to contribute the Development Property to the Joint Venture and to pay all development expenses, such as engineering, architectural, maintenance, and municipal approval costs. Petitioner's App. at 59; R. 1789-1797. Petitioner agreed to act as Respondent's agent and perform the day-to-day tasks to cultivate the Development Property, complete the subdivision approval process, and sell the lots. Petitioner's App. at 59; R. 1789-1797. If the Joint Venture was profitable, they would share the profits, and Petitioner would have the option to purchase the Lake Property for the below-market price of \$150,000.¹ R. 490-492, 1789-1797. If the venture was not profitable, Respondent – not Petitioner – would be responsible for the shortfall and all expenses, and Petitioner would have to vacate the Lake Property. R. 1789-1797.

III. MARCH 1985 - MAY 1991: THE DEVELOPMENT AND SALE PROCESS OF THE DEVELOPMENT PROPERTY TAKES SIX YEARS, NOT SIX MONTHS

A. Petitioner's Errors and Miscalculations Delay the Receipt of Municipal Approval

Unfortunately, in large part due to Petitioner's many mistakes, the development and sale of the Development Property took more than six years, not the four to six months initially represented by Petitioner.² Petitioner's App. at 58-

1. Petitioner testified at trial that the Lake Property was appraised for \$482,000 in 1989. R. 517.

2. The Trial Court found: "Unfortunately, [Petitioner] failed to realize that this approval under the applicable regulations would

63; R. 229-230, 235-236, 1861-1868, 1895-1926. Indeed, it was not until July 1987, the parties obtained subdivision approval for about one-half of the property, and it took another year until they received final approval for the entire subdivision, consisting of eleven individual lots. Petitioner's App. at 60; R. 1742, 1861-1868.

B. The Sale of the Lots Takes Four Years in an Unfavorable Market

Petitioner was responsible to secure potential buyers of the Development Property. R. 254-255, 1792-1793. However, by the time the first lots were available for sale in mid-1987, the real estate market had taken a severe downturn. Petitioner's App. at 63; R. 616-617, 998, 1028-1029. The Trial Court found that: "the real estate market was severely affected by the stock market decline in 1987. Undoubtedly, this was an additional factor in preventing a speedy and profitable sale of the [Property]." Petitioner's App. at 63. In the end, it took the joint venture almost four years to sell the Development Property because of the market conditions and the default by the first buyer that Petitioner introduced.

(Cont'd)

require central water and sewer. It was then obvious that the small number of units could never support such an expensive infrastructure." Petitioner had to re-work her plan altogether, and encountered a number of problems, including: (a) a portion of the property was considered a "wetland" area; (b) certain lots had drainage problems; and (c) there were many difficulties in planning and building a road. Petitioner's App. at 60; R. 244-245, 270-271.

IV. 1991: THE JOINT VENTURE TERMINATES

The Joint Venture terminated in March 1991, with the sale of the final lots. Petitioner's App. at 63; R. 1357, 1914-1926, 2906-2907. Respondent informed Petitioner that the Joint Venture had not been profitable. R. 2904-2905. By letter dated January 23, 1992, Respondent demanded that Petitioner vacate the Lake Property on or before March 1, 1992, but Petitioner refused to do so. Petitioner's App. at 63; R. 497, 812, 2907. From March 1992 until January 2001, Petitioner occupied the Lake Property against Respondent's will and never paid one penny in rent to Respondent. R. 497, 499-500, 812, 2907. In addition, Respondent had no choice but to continue to pay all taxes and insurance on the Lake Property during that time period. R. 812, 1123.

V. COUNTER-STATEMENT OF PROCEDURAL HISTORY

A. The Trial

On September 23, 1992, Respondent commenced a summary proceeding in Justice Court in Putnam County, New York to evict Petitioner from the Lake Property (the "Summary Proceeding"). Petitioner's App. at 63; R. 136-137, 812. On February 10, 1993, Petitioner filed the instant lawsuit in Supreme Court, Putnam County ("Trial Court"), against Respondent alleging five causes of action: (i) unjust enrichment; (ii) constructive trust; (iii) accounting; (iv) fraud; and (v) to compel determination of the parties' interests in the Lake Property pursuant to Article 15 of the Real Property Actions and Proceedings Law of the State of New York. R. 88-92. Shortly thereafter, Petitioner moved: (i) for the summary proceeding to be stayed; and (ii) for the

consolidation of the two actions. Petitioner's App. at 64. By Order dated June 18, 1993, the Trial Court stayed Petitioner's eviction proceeding and consolidated it with this action. *Id.*

Respondent answered Petitioner's complaint and asserted three counterclaims seeking: (i) judgment awarding Respondent possession of the Lake Property; (ii) a warrant for Petitioner's removal therefrom; or, (iii) in the alternative, damages and costs. R. 108-111.

During the next six years, the parties took depositions and Petitioner engaged in "an enormous amount of paper discovery." *Id.* In response to Petitioner's insistence that the Properties had been sold numerous times, and at the Trial Court's suggestion, the parties hired a third-party to conduct a complete title search of each of the eleven lots in the Development Property, which was completed in mid-fall of 1999. R. 3384-3905. There was no evidence of fraud or multiple sales of the same parcels.

In December 1999/January 2000, the Trial Judge, Hon. S. Barrett Hickman, conducted a three-week bench trial. During the trial, four fact witnesses and two accounting experts testified, and the parties introduced 138 exhibits encompassing more than 2,200 pages. At trial, Petitioner focused primarily on three issues: (i) whether the Agreement created a joint venture or reinstated the mortgagor-mortgagee relationship; (ii) whether Respondent fraudulently sold certain of the development lots multiple times; and (iii) whether Respondent fraudulently accounted for the real estate development proceeds. Indeed, at trial for almost 200 pages of trial testimony, Petitioner detailed her wild and unsupported theories about alleged "conspiracy" and "double sales" of the lots, "fraud . . . in the dark of night," "telltale

fact[s],” “locked eyes,” “funneled” monies, and “fake documents.” *See, e.g.*, R. 287-288, 372, 376-377, 445-446, 463-466, 481-483, 1636, 1760 and 1776.

On May 19, 2000, the Trial Court issued its Decision and Order setting forth its legal and factual findings which would form the basis of the court-approved accounting for the joint venture. The Trial Court held, *inter alia*: (i) the Agreement created a joint venture relationship between the parties and did not reinstate any of Petitioner’s original mortgages; (ii) Petitioner received adequate consideration in the Agreement; and (iii) Respondent did not commit fraud. Petitioner’s App. at 68-86. The Trial Court also requested the parties prepare a final accounting based on the determinations in the Decision and Order that would then finally determine whether the Joint Venture was profitable. *See* Petitioner’s App. at 82.

In August 2000, after the parties’ accountants had met, the parties realized that there were accounting questions that were not specifically addressed in the Decision & Order. Therefore, Respondent and Petitioner *jointly* requested further guidance concerning specific accounting issues from the Court. On August 29, 2000, in response to the parties’ joint request, the Trial Court provided further written instructions which answered the parties’ questions by providing guidance on how certain items should be prepared for the accounting.³

3. For instance, in the Decision and Order, the Trial Court held that the interest after the initial five month period “should be simple interest per annum.” R. 79-80. Consistent therewith, the Trial Court instructed the parties to use simple interest (compounded annually) in the joint accounting. R. 121-122.

Based on the Trial Court's Decision & Order and further instructions, the parties submitted a joint accounting.

In its Judgment, dated October 26, 2000 ("Judgment"), the Trial Court: (i) dismissed Petitioner's Complaint; (ii) ordered Petitioner's eviction from the Lake Property pursuant to Respondent's counterclaim and petition; and (iii) approved a final accounting for the Joint Venture, which showed that the expenses of the venture had exceeded income by more than \$288,000. *See* Petitioner's App. at 9-55.

B. The Appeal

On October 26, 2000, Petitioner filed a Notice of Appeal. R. 2-3. On January 9, 2001, Petitioner filed a Voluntary Petition for Bankruptcy in United States Bankruptcy Court for the Southern District of New York (Case No. 01-30005). In May 2001, the Bankruptcy Court granted Respondent's motion to lift the automatic stay and on June 13, 2001, after 18 ½ years of rent-free tenancy, Petitioner was evicted from the Lake Property. In September 2001, the Bankruptcy Court dismissed Petitioner's bankruptcy case. After Petitioner did nothing to pursue her appeal from the Trial Court for another two years, the Appellate Division dismissed her appeal on September 4, 2003. The appeal was eventually reinstated upon motion by Petitioner.

(Cont'd)

As a second example, in the Decision & Order, the Trial Court held that Petitioner "should receive some consideration " for her equity in the Development Property. Petitioner's App. at 83 (emphasis added). In its instructions, the Trial Court informed the parties when that consideration should be accounted for during the six years of the joint venture.

In a Decision & Order dated December 27, 2004, the Appellate Division, after extensive briefing and oral argument, unanimously denied Petitioner's claims and affirmed the Trial Court's factual findings and interpretation of New York law. Specifically, the Appellate Division held that, under New York law, the Agreement created a joint venture and did not constitute a reinstatement of Petitioner's mortgages. The Appellate Division also denied Petitioner's claims that: (i) the Court lacked jurisdiction to evict Petitioner; and (ii) Respondent's actions were fraudulent.⁴

In a Decision & Order on Motion dated March 28, 2005, the Appellate Division denied Petitioner's motion to reargue, resettle and amend its Decision & Order or, in the alternative, for leave to appeal to the New York Court of Appeals.

In a Decision dated July 6, 2005, the New York Court of Appeals denied Petitioner's motion for leave to appeal. On November 17, 2005, the Court of Appeals also denied Petitioner's motion for reargument of her motion for leave to appeal.

STANDARD

When a writ is sought to review a state court decision, this Court will only have jurisdiction if the case has been appealed to the highest court in the state and: (1) the state court reviewed the validity of a statute or treaty; (2) the validity of a state statute is drawn into question on the ground of its being "repugnant to the Constitution, treaties, or laws

4. The Appellate Division modified the Judgment to eliminate the award of monetary damages to Respondent for Petitioner's possession of the Lake Property from 1992 through 2001.

of the United States,” or (3) “where any title, right, privilege, or immunity is specially set up or claimed under the Constitution . . .” 28 U.S.C. § 1257. The federal issue must be either raised or “squarely considered and resolved” by the state court. *See, e.g., Illinois*, 462 U.S. at 218 n.1.

Writs are granted only for compelling reasons. *See* Sup. Ct. R. 10. As relevant here, this Court limits its review to cases where a state court has decided “an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(b), (c). This Court will decline review of a state court decision that rests on independent and adequate state law grounds. *See Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568, 97 S. Ct. 2849, 53 L. Ed. 2d. 965 (1977). A petition based on erroneous factual findings is also “rarely granted,” because the Court will defer to state court findings of fact in the absence of exceptional circumstances. *See Hernandez v. New York*, 500 U.S. 352, 366, 111 S. Ct. 1859, 114 L. Ed. 2d 395 (1991) (plurality opinion).

REASONS FOR DENYING THE PETITION

I. THIS REAL ESTATE JOINT VENTURE DISPUTE DOES NOT PRESENT FEDERAL OR CONSTITUTIONAL QUESTIONS APPROPRIATE FOR REVIEW BY THIS COURT

Despite Petitioner’s exhortations, this run-of-the-mill real estate dispute does not present any issues of federal or Constitutional importance. This case is about an unprofitable real estate joint venture between a New York savings bank

and a New York resident. The parties entered into a joint venture agreement – governed by New York law – to develop and sell eleven small building lots in Putnam County, New York. Once the Property was finally sold, the parties brought New York state court actions against each other to resolve issues related to the Agreement and the amount of proceeds properly attributable to their joint venture. The Court should reject out of hand Petitioner's mix of inscrutable, strained and, at times, fabricated Constitutional claims.

A. The Appellate Division Did Not Apply Harmless Error Review

Contrary to Petitioner's claim, the Appellate Division did not apply a harmless error analysis to their review of the Judgment. There is no mention of harmless error review in the Appellate Division's Decision & Order and Petitioner fails to point to any language that can be construed as such.⁵ See *Dimery v. Ulster Savings Bank*, 13 A.D. 3d 574, 574-75, 789 N.Y.S. 2d 159 (2d Dep't 2004). Instead, the Appellate Division reversed the only Trial Court error it found, and upheld the Trial Court's primary finding that the Agreement created a joint venture because it was based on a "fair" interpretation of the evidence. *Id.*

B. The Trial Court Did Not Adjudge Respondent Incompetent

Contrary to Petitioner's bold misrepresentation, no New York court adjudged Respondent "incompetent."

5. Petitioner's argument actually seems to be that the Trial Court found certain of Respondent's actions harmless instead of fraudulent. This type of factual inquiry has nothing to do with harmless error review and has no place before this court. See *Hernandez*, 500 U.S. at 366.

Petitioner never raised this issue before any New York court and no New York court passed upon it *sua sponte*. Petitioner apparently divines this novel issue from the Trial Court's analysis of whether Respondent committed fraud – a factual determination based on state law that was upheld by a unanimous Appellate Division and is not reviewable by this Court.

Moreover, Petitioner's ill-conceived Fifth Amendment claim does warrant review. None of Respondent's representatives ever sought Fifth Amendment protection in this case and, moreover, no such issue was presented for review before the New York courts. *See id.* Similarly, Petitioner's New York state banking law claim, also never raised below, does not warrant review. No Court considered, nor was even asked to consider, whether Respondent violated any New York state banking law which, in any case, would not be reviewable. In contrast to what Petitioner would have this Court believe, there is not even a shred of evidence to suggest that Respondent violated any New York banking law, and indeed, Petitioner's allegation of misconduct – to wit, Petitioner's fraud claims – were squarely rejected by the New York courts.

C. There Are No "Structural Errors" That Require Reversal

1. *The Case Proceedings Were Not Erroneous*

Petitioner's claim that Respondent submitted conflicting affidavits is a factual dispute appropriate for review by the Trial Court – not the United States Supreme Court. *See Hernandez*, 500 U.S. at 366. Moreover, it was not raised

to or passed upon by the New York Appellate Division and surely does not raise a Constitutional issue or relevant conflict for this Court's review. *See* 28 U.S.C. § 1257; *Illinois*, 462 U.S. at 218 n.1.

2. *There Is No Evidence of Judicial Bias and Petitioner Had an Extensive Opportunity to be Heard*

There is no evidence whatsoever to support Petitioner's spurious claims that the Trial Judge was biased. The Trial Judge was more than accommodating to Petitioner and, for example, listened to her testify for more than six days about plainly fanciful suppositions and claims. Overall, the trial lasted three weeks, included 138 exhibits covering 2,200 pages, and four fact witnesses, and two accounting experts. Thereafter, the Court decided the germane legal issues to prepare an accounting. The process was fair and impartial. The Trial Court gave Petitioner a more than adequate opportunity to be heard and did not prejudice this case.

In addition, this issue further does not warrant review because it was raised for the first time in the Petition. *See Illinois*, 462 U.S. at 218 n.1.

D. *The Trial Court's Written Instructions Do Not Create An Issue Appropriate For Review By This Court*

Petitioner's claim that the Trial Court acted improperly by providing specific advice on several accounting-related questions following the Decision & Order is meritless. First, Petitioner *requested* that very guidance. Second, that advice was part of the procedure that the Trial Court had established

to adjudicate the case. The first step was a trial to determine the overarching legal and factual issues. The second step was the preparation of an accounting based on those determinations. In proceeding to the second step, *both* parties realized that their experts needed further guidance on how to properly reflect certain transactions in the accounting. The Trial Court provided that guidance.

In doing so, the Trial Court did not exercise appellate jurisdiction. Petitioner does not state why, under New York or federal law, the Trial Court could not provide the additional specific guidance that was *jointly requested in writing* by the parties to assist them in preparing a final joint venture accounting. The Trial Court did not make any substantive changes to its Decision and Order in its supplementary memorandum. R. 120-122. Again, this New York state procedural issue is not a federal or Constitutional issue appropriate for review by this court. *See Zacchini*, 433 U.S. at 568.

E. The Trial Court Had Jurisdiction to Evict Petitioner

The Trial Court had jurisdiction to evict Petitioner.⁶ The issue Petitioner presents here — whether the description of the Lake Property in the Petition meets New York State law standards — is a New York state procedural issue which is not reviewable by this Court.⁷ *See Zacchini*, 433 U.S. at 568.

6. *See* Petitioner's App. at 81-82; *Village of Woodbridge v. Proyect*, 18 Misc.2d 621, 624-625 (Co. Ct. Sullivan Co. 1959).

7. Petitioner's citation of purportedly conflicting holdings within New York is not the type of inter-state conflict this Court will adjudicate. *See* Sup. Ct. R.10.

Moreover, Petitioner's Constitutional rights were not violated. Petitioner had notice of the Summary Eviction Proceeding. Petitioner was personally served with the Notice of Petition, Petition and the Warrant of Eviction at the Lake Property.⁸ In response, she filed the New York Supreme Court action and successfully moved to have the Summary Proceeding stayed and to have the two actions consolidated. Petitioner's App. at 64. Respondent then counterclaimed in the Supreme Court, Putnam County, action to evict Petitioner. R. 108-111. In all, possession of the Lake Property was the subject of four pleadings and 15 years of litigation. For Petitioner to continue to allege that the New York court did not have jurisdiction to decide this issue – which she raised in her own Complaint in this action – is ludicrous.⁹

Moreover, Petitioner has not offered any evidence that the address listed in the Petition is incorrect, other than her *ipse dixit* speculation about where Mahopac, New York ends and Mahopac Falls, New York begins and ends in Putnam County. Instead, Petitioner repeatedly used the address contained in the Petition from 1983 until she was evicted.¹⁰ R. 97, 139.

8. The process server personally served Petitioner with the Notice of Petition and Petition. He recorded Petitioner's address as "Box 338, South Lake Blvd., Mahopac Falls, New York 105[illegible]." R. 140. Petitioner testified under oath at trial that these documents were "delivered to [her] home." R. 315.

9. Petitioner's point regarding the requirements of N.Y. C.P.L.R. § 507 is moot because she did not appeal the foreclosure actions, and as the Trial Court held, she waived this issue when she voluntarily deeded the properties to Respondent as part of the Joint Venture. See Petitioner's App. at 80.

10. (i) her Answer to the Petition in the Summary Proceeding; (ii) the Agreement; (iii) her monthly banking statements and personal
(Cont'd)

The undisputed fact remains that Petitioner lived *for free* in Respondent's house in excess of 15 years and used every tactic imaginable to forestall her eviction, including this litigation. Petitioner had ample notice and opportunity to be heard and, as such, there is no Constitutional violation.

CONCLUSION

For the foregoing reasons, Respondent Ulster Savings Bank respectfully requests that this Court deny the Petition for a writ of certiorari in its entirety, grant Respondent its costs and expenses for opposing this motion, including attorneys' fees, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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checks; (iv) third-party vendor invoices for the Joint Venture; (v) correspondence with Respondent, the State of New York Department of Transportation, and the Town of Carmel; and (vi) pleadings in this case; and (vii) her testimony at trial.

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No. 05-1063

Supreme Court, U.S.
FILED

MAR 31 2006

OFFICE OF THE CLERK

In The
Supreme Court of the United States

ALICE LARAINÉ DIMERY,

Petitioner,

v.

ULSTER SAVINGS BANK,

Respondent.

**On Petition For A Writ Of Certiorari
To The Appellate Division, Supreme Court Of
New York, Second Judicial Department**

REPLY BRIEF FOR PETITIONER

**A.L. DIMERY
Box 338
Mahopac Falls, NY 10542
(845) 628-1320**

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REPLY BRIEF FOR PETITIONER

[W]hatever disagreement there may be as to the scope of the phrase 'due process of law,' there can be no doubt that it embraces the fundamental conception of a fair trial We are not speaking of mere disorder, or mere irregularities in procedure, but of a case where the processes of justice are actually subverted.

Fay v. NOLA, 372 U.S. 391, 411 (1963)

The Respondent's "*ipse dixit* speculation" statement regarding an inability to determine city boundary lines is demonstrative of [*Brief in Opposition* (Opp.) page 18] the bank's cavalier attitude regarding proper procedures and pleadings as established by law, and the total irrelevance of the *veracity* of factual claims made by the Respondent. Keenly aware of the standards of review for each stage of the appeal process, the Respondent creates phantasmogoria. What the record establishes, what in fact occurred, are beside the point. In its Brief [Opp.] the Respondent makes false material statements, libels the Petitioner, ignores and distorts the record, feigns disbelief that the Petitioner should dare assert that constitutional guarantees are relevant issues in the conduct of state proceedings, and claims specific Appellate court holdings regarding matters on which the court remained silent. The Appellate court did not address, the joint venture determination or accounting, ~~fraud~~, statutory compliance of the summary proceeding ~~petition~~, eviction issues, jurisdictional issues, constitutional questions, false assignment of liability under judgment, or bank conduct. [Petitioner's Brief (P.Brief) App.3] At page 8 [Brief Opp.] the Respondent bank makes false claims of tax and insurance payments relative to Petitioner's residential property. Those taxes not paid out of pocket by the Petitioner (subdivision taxes) were repaid in full to the Respondent at 13.5%

interest for the use of the funds. All insurance premiums relative to the residential property were paid out of pocket by the Petitioner under an owner's policy issued in the name of the Petitioner as evidenced in Brief App.104. By Order of the trial court, the name of the mortgagee on the Petitioner's owner's policy, was changed from that of Ulster Savings Bank to that of Clerk of the Supreme Court of the County of Putnam, a fact known to the Respondent, rendering its false statements to this Court deliberate acts of deception.

Further, the record establishes that proper and timely foundation either before the trial court or the appellate courts has been laid for preservation of all subjects in Petitioner's brief. The Respondent perhaps misreads the Petitioner's statements regarding the Fifth Amendment issue, which were appropriately included relative to the determination of "incompetence" which, *de facto*, did shield the Respondent from the consequences of its conduct as evidenced on the face of the record. The Respondent's most commonly used phrase at trial was, "The document speaks for itself." The documents bespoke misconduct, errors and omissions. This was clearly understood, and articulated by the trial court, and held to be "incompetence," shielding the Respondent from accountability and liability to the Petitioner, raising the constitutional question of whether this is permissible.

1. The Brief [Opp.18] claims that the length of a proceeding can confer *jurisdiction*, despite the fact that lack of subject matter jurisdiction cannot be cured, and that the Respondent's defective summary petition can be made valid by borrowing legitimacy from other non related legal submissions of the Petitioner, which in fact do not and cannot cure the petition's defects. At trial such "defects" on the face of the record were held by the court to be indicia of its determination of "Ulster's incompetence."

The Court:

"The court is mindful of "Ulster's incompetence" as well as the many other errors and omissions disclosed during the trial." [P.Brief App.83]

"This is another example of the sloppy and "incompetent" legal work involved in this joint venture." [P.Brief App.80]

"... there were many loose ends and extremely sloppy legal work and use of inappropriate forms, failure to timely record instruments, and many other shortcomings as noted in plaintiff's brief ... " [P.Brief App.79]

"... careless legal work and terminology ... " [P.Brief App.81]

2. The Court is respectfully asked to consider the implications of the improbable version of events and circumstances described by the Respondent in its brief relative to the parties' joint venture. The March 1, 1985 Agreement between the parties provided that on thirty days notice, the bank could end the venture, with the respective parties free to independently pursue their interests, if the bank, *in its sole discretion*, determined that the Petitioner was in default under the terms of the Agreement. The trial court held that the Respondent could have sought judicial assistance if the Petitioner failed to vacate any relevant property referenced in the Agreement. [P.Brief App.81]

With this leverage, why would the Respondent remain in a joint venture with a mortgagor, if the venture were intolerably off schedule and the joint venture partner's professional efforts were not timely and productive? There are only two viable answers, "incompetence" or fraud. The bank cannot claim benevolence or fiduciary obligations. [P.Brief App.87]

No notice of default was ever issued by the Respondent, rendering the bank's claims of victim hood completely and totally disingenuous. The bank knew that all relevant legal documents were in the Petitioner's name, and the bank had to *engineer* a mechanism to get rid of the Petitioner, keep the money, keep the property and keep the profits. The Respondent executed a scheme (1) to file possibly forged certainly improperly obtained referee deeds, (2) to divest joint venture assets during litigation, and (3) to fabricate a landlord-tenant relationship for quick disposal of the matter in Justice Court.

3. As it has successfully done with impunity before the reviewing courts, on page 4 of its Brief [Opp.] the Respondent makes known false material statements to this Court. Ulster Savings Bank *did not* obtain title to the Development property through an **October 25, 1984** foreclosure judgment [R.2132, 2133] [Compare App.111], and the Petitioner's mortgage debt obligations to the Respondent are identified in the March 1, 1985 Agreement as a continuing debt obligation against the Petitioner. [R.99] The trial court held that the Petitioner's debt was not liquidated, [P.Brief App.80] and the Judgment against the Petitioner contains 38 pages bearing the heading, "Dimery Indebtedness." [P.Brief App.17-55] The judgment conclusions relative to the non liquidation of the debt are disputed by the Petitioner and the issue was raised properly on appeal.

The bulk of the subdivision property, consisting of a fifteen acre parcel improved by three structures, was never mortgaged to Ulster by the Petitioner and *was not included in the papers submitted by the bank to the foreclosure court* relative to the default judgment obtained by the Respondent on October 25, 1984, unknown to the Petitioner until litigation. The portion of the Development property in question concerned two adjacent vacant lots,

with separate tax map numbers. This October 25, 1984 default foreclosure judgment is an out-of-venue proceeding, which absent a filed affidavit of Service deprived the court of jurisdiction over the person of the Petitioner, an issue which is not time barred relative to a default proceeding. The trial court held that the issue is "moot" because the Petitioner deeded the non mortgaged to Ulster property to the Respondent on March 1, 1985 in conjunction with the Agreement signed on that date, holding that the collateral deed was simply a gift of valuable real property to the Respondent, with no corresponding obligations on the part of the Respondent to the Petitioner. [See Brief Opp.18 note 9, P.Brief App.80]

4. The case record, however, contradicts this material interpretation of the lower courts. The Respondent bank was fully aware that it had no legal rights concerning the Petitioner's non mortgaged to Ulster property. Chairman Howard St. John stipulated at trial that not all of the subject properties were mortgaged to the Respondent. [R.951 line 19] The solution designed and executed by the Respondent, a federally regulated banking corporation, was to totally fabricate a **December 18, 1984** foreclosure proceeding, and claim ownership of the Petitioner's property not mortgaged to the bank. This false claim was made to the NYS Department of Banking, the FDIC and to the tenants of the Petitioner, residing on the non mortgaged to Ulster property. [P.Brief App.100, 102] The General Ledger of the Respondent bank, reviewed by federal regulators and examiners, claimed this as foreclosed property, labeled ORE. [P.Brief App.96-99] Current records in the Putnam County Clerk's Office, before the trial court, report that on January 29, 1986, during the parties joint venture, *after* the Petitioner had obtained preliminary approval for an 11 lot subdivision under a deed in her favor, Ulster Savings Bank did surreptitiously

file the collateral deed given by the Petitioner on March 1, 1985, claiming fee ownership of the Petitioner's non mortgaged to Ulster and property mortgaged to Ulster, with no notice to the Petitioner, a fact learned by the Petitioner during litigation. The circumstances surrounding the actual date of this "filing" are unclear. Final subdivision approvals for Sections I and II of the Pine Manor Subdivision were granted in the name of the Petitioner, under a filed deed in favor of the Petitioner. [P.Brief App.110, 111] No such collateral deed "filing" by the Respondent was located by the relevant planning board principals in August or November of 1987 [maps #2252 & #2252A] or on June 10, 1988, when the Petitioner's subdivision map #2252B was filed to correct a technical deficiency in a lot line. [P.Brief App.107-109]

5. A judgment determines the rights of the parties in an action, and must refer to and state the result of a decision in a civil proceeding or recite the circumstances on which it is based. As detailed in the Petitioner's *Brief*, Judgment in this case improperly and unconstitutionally assigns liability to the Petitioner under an unknown Contract dated **December 18, 1984**, the same date as that of the foreclosure proceeding totally fabricated by Ulster Savings Bank, relative to property not mortgaged by the Petitioner to the Respondent. The case Judgment is silent on the subject of trial, the March 1, 1985 Agreement between the parties of which the current President of the Respondent Clifford Miller and Loan Officer John Schusler were co-administrators. [R.962 line 11]. False assignment of liability under judgment is a constitutional issue properly before this Court.

6. This case is replete with erroneous proceedings where liability has been assigned to the Petitioner relative to non-existent property, [Mahopac Falls, NY; Garrison, NY; Lake Carmel, NY; Carmel, NY], non-existent foreclosure

representations [December 18, 1984], non-existent landlord tenant relationships, and non-existent contracts. This is a serious jurisdictional issue before the Court, raising the question of whether a court can be invested with jurisdiction, and possess jurisdictional competence to proceed to judgment, relative to subject matter which does not exist.

7. The trial court *did not* possess jurisdictional competence to proceed to judgment on October 26, 2000, while the Decision & Order of the court was on appeal. The appeal process ended on November 17, 2000. [See P.Brief11]

"when the cause is taken over by a reviewing court on appeal or other proceeding in review, the trial court is divested of jurisdiction of the subject matter during the period of review, and has no power to vacate or modify the judgment or otherwise to deal with the cause" . . . And any "proceedings taken after the notice of appeal was filed are a nullity." *Davis v. Thayer*, supra, 113 Cal.App.3d at p. 912; the parties cannot invest a trial court with jurisdiction during the pendency of an appeal. (See, e.g., *In re Johannes* (1931) 213 Cal. 125, 131).

8. The trial court exercised appellate jurisdiction when it revisited its filed Decision & Order, amended the Decision & Order, and added in excess of \$ 600,000.00 to the Petitioner's alleged debt, affecting substantial rights of the Petitioner, in violation of CPLR 5019(a) [P.Brief11] altering the outcome of the case. *The off the record "guidance" writing of the trial court reversed the position of the Petitioner from winner to loser of the case.*

The issue before the Court is not New York State procedure, but the deliberate dispensing with the known proper procedure by the trial court in an act of judicial

bias and seeming collusion, resulting in jurisdictional defects and constitutional structural error in this case in violation of the Petitioner's right to a "fair" trial.

9. In this case, there are significant federal questions relative to the bank's testimony under oath that the FDIC was fully aware of and gave explicit approval to the bank's conduct relative to joint venture assets. [See P.Brief7; R.1090 lines 4-10] The trial court's holding [See P.Brief4] that the Respondent did not enter the agreement or the ensuing revenue receipts in its books and records is prima facie evidence that Ulster's representations to the FDIC relative to this case were demonstrably false and misleading to the severe prejudice of the Petitioner, while the Petitioner was led by the Respondent to believe that accountings prepared by the bank's mortgage department and given to her by the Respondent were valid 'on the books' verification of the liquidation of her mortgage debt.

Referencing the Federal Deposit Insurance Act of 1950, 13(e), 64 Stat. 889, as amended, 12 U.S.C. 1823(e), the Court stated in *Langley v. FDIC*, 484 U.S. 86 (1987):

One purpose of 1823(e) is to allow federal and state bank examiners to rely on a bank's records in evaluating the worth of the bank's assets. Such evaluations are necessary when a bank is examined for fiscal soundness by state or federal authorities, see 12 U.S.C. 1817(a)(2), 1820(b) . . . Neither FDIC nor state banking authorities would be able to make reliable evaluations if bank records contained seemingly unqualified notes that are in fact subject to undisclosed conditions. . . .

A second purpose of 1823(e) is implicit in its requirement that the "agreement" not merely be on file in the bank's records at the time of an

examination, but also have been executed and become a bank record "contemporaneously" with the making of the note and have been approved by officially recorded action of the bank's board or loan committee. . . .

The harm to the FDIC caused by the failure to record occurs no later than the time at which it conducts its first bank examination that is unable to detect the unrecorded agreement and to prompt the invocation of available protective measures, including termination of the bank's deposit insurance. See 1818 (1982 ed. and Supp. IV). Thus, insofar as the recording provision is concerned, the state of the FDIC's knowledge at that time is what is crucial. But as we discussed earlier, see *supra*, at 92, 1823(e) is meant to ensure more than just the FDIC's ability to rely on bank records at the time of an examination or acquisition. The statutory requirements that an agreement be approved by the bank's board or loan committee and filed contemporaneously in the bank's records assure prudent consideration of the loan before it is made, and protect against collusive reconstruction of loan terms by bank officials and borrowers (whose interests may well coincide when a bank is about to fail).

The short of the matter is that Congress opted for the certainty of the requirements set forth in 1823(e). An agreement that meets them prevails even if the FDIC did not know of it; and an agreement that does not meet them fails even if the FDIC knew. It would be rewriting the statute to hold otherwise.

10. The lower courts did not deny the legitimacy of the claims of the Petitioner, and did not find that the conclusions of law advanced by the Petitioner were erroneous. That the courts were silent is the basis of the

Petitioner's claim that silent harmless error review had to have been carried out by the courts, affecting substantial rights of the Petitioner. The only other conclusions are that the reviewing courts never read the papers, or did affirm the judgment with bias, claims which were not made by the Petitioner.

11. On page 15 [Brief Opp.], the Respondent states that the Petitioner held false affidavits to be the basis of claims that the proceedings were erroneous. The Petitioner demonstrated that nearly three million dollars in joint venture assets were divested by the Respondent bank during litigation, without notice to the Petitioner, and that the adjudicated finding at trial that the sum in question was only \$270,000.00, known by the trial court to be false, affect substantial constitutional rights of the Petitioner, depriving the Petitioner of a fair trial.

CONCLUSION

For the foregoing reasons, and for those in the petition, the petition for Writ of Certiorari should be granted. In the alternative, the petition should be granted, the judgment below as appealed from should be vacated in its entirety, and the case remanded for consideration consistent with the determinations of the Court.*

Respectfully submitted,
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* Based upon information and belief, Ulster's counsel, the law firm of Chairman Howard St. John, general counsel to the Respondent bank, was dissolved during trial, shortly before the determination of Ulster's "incompetence," lack of legal qualifications and fitness to carry out required duties.